



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

Agenda #	Relate To	Position	The following individuals submitted comments on agenda item:	
			Name	Comments
54.		Favor	Adam Doherty	
			Amy Rosenstein	Dear Supervisors, As someone who lives adjacent to Ballona Creek in Culver City, I enjoy riding on the bike path and see the trash in the water and along the shore. It's imperative that the County take action to do whatever they can to reduce the amount of pollution entering our ocean. The Interceptor provides an extraordinary opportunity to accomplish this goal. These interceptors have proven successful for other waterways and we are so fortunate to have one offered to us to capture the trash in Ballona Creek. I hope you consider the greater good when making your decision and vote to allow the Interceptor to be installed. Thank you.
			Angie Rutan	
			Cathleen Edelbrock	
			craig herring	PLEASE WE NEED THE TRASH "INTERCEPTOR" installed ASAP!!!! Ballona Creel is a constant source of thousands of tons of trash and plastics that pollute our beaches and kill our wildlife! The installation of this AMAZING trash Interceptor is something that MANY THOUSANDS of PDR, Santa Monica, El Segundo and South Bay beachgoers have WANTED FOR DECADES!!! We finally NEED our worsening beach and ocean pollution to be cleaned up forever!!! THANK YOU!! Craig Herring, PDR
			Jan Haagen	Please approve item 54. We need the Interceptor. We can't go into the water @ the beach because County Public Health says we will get sick. We have diseased dead animal carcasses washing up onto the beach & sooo much trash. Please save our beach!!
			Lauren Wilt	Please please please move forward with this. The beaches are trashed every time it rains, this is a place for families and friends to enjoy time together in nature... for free! We need the interceptor please!
			Lisa Toth	I am highly in favor of the trash interceptor for the Ballona Creek trash issue we are having from our recent rains and on-going issues with homeless encampments. Those who oppose due to noise or this blocking their view, should re-think whether they would rather have this trash build up even more and flow on to our streets and closer to our homes.
			Lucy Han	Please vote in favor of this motion. So much trash is on the beach as a result of the outflow from Ballona Creek during the last rain. The trash has made our beach toxic. We can't go in the water because County Public Health says we'll get sick. Wildlife is eating the trash that emanates from Ballona Creek. Please install the Interceptor ASAP. Save our ocean & beach. Thank you.



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

Agenda #	Relate To	Position	Name	Comments
54.		Favor	Maria Pacheco	The interceptor is our only hope for cleaning up the beach in Playa del Rey. We should NOT be LA's dumping ground because Ballona Creek ends here. But, that is the case. Families cannot enjoy the beach because of needles, glass and dead animals. Please approve the Interceptor.
			Michelle A Barnes	As a 21-year resident of Playa del Rey, I fully support the trash impactor. I don't think I've ever supported any county measure so strongly in my lifetime. The trash covering our beaches and waterways makes Los Angeles look like a third world country. But that's nothing compared to the more serious issues. Birds and sea life are injured and dying. Needles, condoms, and diapers wash up on our shores. I know. I ran a beach cleanup for at least a year. Playa del Rey is beautiful but I no longer feel safe to swim in the disgusting trash-filled ocean. I believe it to be a health hazard. Please please push this forward as quickly as possible
			Natasha Khamashta	Please vote YES to move the Interceptor pilot project forward, to help clean the Ballona Creek so trash doesn't end up in the ocean and onto our beautiful Playa del Rey beach. Thank you for supporting our environment so all Angelenos and visitors can safely enjoy the beach.
			Wesley T Chuang	
		Oppose	Adam Davis	We need more time to consider the specific location in Ballona Creek before permanent installation. There are still some unanswered questions.
			Bev-Sue S Powers	
			Christina Shaver	LA County PW and the Ocean Clean-Up have conveniently cherry-picked data and has groomed non-profit organizations and local schools to support the Interceptor, deceiving these organizations who they call "stakeholders" into believing that the Interceptor is a benefit. In fact, LACPW has conveniently dismissed factual information that contradicts the placement of the Interceptor's in Ballona Creek because they convinced themselves of the benefits of the contraption prior to fully and comprehensively examining the cons to that location. At least once study discounts the federally protected seals and sea lions who live mere yards away from the proposed location, and frequently use the exact location of the Interceptor to find fish to eat. Additionally allowing the release of between 10 to 37 tons of garbage to flow past the protected Wetlands- potentially dumping untold amounts of microplastics and pollutants into that reserve is an irresponsible part of their plan. I urge the supervisors to look underneath the hood of this fancy vehicle that has been sold to LA County Public Works. There's no reason to approve this matter at today's meeting. Taking more time to fully and comprehensively review the negative environmental impacts of an Interceptor located in Ballona Creek is the responsible approach to take.
			Cindy Karpeles	

As of: 4/5/2022 7:43:50 AM



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

The following individuals submitted comments on agenda item:				
Agenda #	Relate To	Position	Name	Comments
54.		Oppose	Corin Kahn	see attached letter
			Corin Kahn	The documents state that about 25% of the garbage that will be retrieved by the Interceptor is organic, i.e., not plastic. I imagine this includes twigs and weeds but also dog and other animal waste and food dumped onto the streets and down the storm drains to the Creek. Moving downstream And thus delaying the removal of the organic materials from the water means longer time in the water, especially during non-storm periods when it is only urban run off that is delivering this matter to the Creek. I presume this means greater dissipation, dilution and therefore infiltration into the Creek water which directly adds to the TMDL (Total Maximum Daily Load) which is the measure of bacterial levels that Ballona Creek must achieve to meet the Municipal Separate Storm Sewer System MS4 Permit Order No. R54-2012-1075. This is a negative physical impact on the environment caused by delay of the time of removal caused by the implantation of the Interceptor.
			Corin L Kahn	see letter attached to this email
			Debbie Wasserman	
			Debra Berman	This interceptor location you are planning to implement is a hideous idea. Not enough communication with the neighbors, who will be tremendously affected by this, let alone there is not enough true transparency with the board of supervisors, Public Works, Supervisor Mitchell. Who is getting financial "kick back" on this? Why has there been a stall on the Alla Road program, or improving the existing 3 boom system that could solve trash collecting problems. Shame on you.
			derev antikacioglu	There is just way too much to unpack, discuss, learn, and gather as far as more data before making this massive & permanent decision that will greatly impact our community!
			Edward A Hope	Please don't turn Ballona Creek into a dump! I work in Carson and it's disgusting.
			Harry Kilpatrick	Twenty year resident.
			Jeremy Dee	Please delay vote until all questions have been answered and considered.
			John Campbell	Opposed to current location of the interceptor. Currently is placed just south of the pedestrian bridge, and very close to nearby homes. The location will be noisy and smelly with the operation and interfere with fishing from the jetty, and will not add to the beautiful view of california beaches. The same result and performance can be had installing the interceptor up Ballona Creek where there are fewer homes and foot traffic, etc.



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

The following individuals submitted comments on agenda item:				
Agenda #	Relate To	Position	Name	Comments
54.		Oppose	Jonathan Shaver	<p>The Ballona Creek interceptor project should not be approved by the Board of Supervisors.</p> <p>It is bad for the environment. It is designed to intentionally pollute ecologically sensitive areas and will interfere and harass protected species and mammals. It is additionally a waste of previous fresh water.</p> <p>The Interceptor is a Pilot in name only. It is called a "Pilot" just to provide an end around CEQA. It is a permanent installation and construction on the Jetty's. The interceptor in its configuration would require no adaptations for deployment. It is not a Pilot.</p> <p>The Ballona Creek Interceptor Project is not a safe water project because it will intentionally allow for garbage to flow closer to the ocean which has been stated by scientists to not be a best practice. This is not a safe water project because the interceptor will intentionally pollute safe water and violate initiatives for the reuse of fresh water.</p> <p>LA Public Works has conducted in an unprofessional and unethical manner in the approval of the project. This starts with inappropriately calling the Interceptor a Pilot so they can allow for increased pollution down creek towards the ocean. The Notice of Exception was prepared with a different location then currently proposed. They did not disclose to the public an internal memo addressing the change of location. Questions answered both at community meetings and via email are strife with inaccuracies, misinformation and at times outright lies.</p> <p>LA Public Works did not appropriately engage the community, but choosing to selectively include groups not affected by the Interceptor early in the process, while not affecting community with community members that are</p> <p>The Interceptor is bad for the environment, bad for wildlife, bad for the community and is only designed to save money on trash collection.</p> <p>Precious time and resources from the Ballona Creek Interceptor Project should be used to aggressively pursue what is referred to and supported by Environmental Communities as the Alla Road project, which 2 ½ years after the direction was given for this project is still in the concept stage.</p> <p>Trash should be collected effectively upstream and the Supervisors should hold LA Public Works accountable to manage the current booms effectively and complete the Alla Road project. The wetlands, wildlife, rowers and other community members and the environment on a whole should not have to pay the price for poor management of the current booms.</p>

As of: 4/5/2022 7:43:50 AM



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

The following individuals submitted comments on agenda item:				
Agenda #	Relate To	Position	Name	Comments
54.		Oppose	June Kailes	file attached via the above system
			Libby Riddle	<p>I'm strongly opposing this at this time. Please please please consider that there are SO many unanswered questions and issues that need deep, careful, and thoughtful investigation before permanently installing the interceptor on the hip of our community and next to our homes!</p> <p>The concern is not just the view being mildly obstructed, and it's not just the decibel levels of the unmanned machine. It's several other concerns that we need to understand and consider before making the permanent decision of where it will sit and live for the long haul because as you can see on YouTube videos these interceptors are not typically installed near quiet & quaint little communities like Playa. Consider how that motorized conveyor belt will be non-stop shattering & clanking glass bottles being dropped into the bins, clanking & banging hard metals, crunching plastics, slopping gunk that will be heard all day & all night in this peaceful quiet little beach town that sits in just 25 decibels in the evening. Your interceptor begins at over 70 decibels which is considered "unacceptable" to LA standards in residential areas. And their are other legitimate concerns that are worth discussing as well. Like location & placement of this machine. If the project were to be moved backwards a little further like initially promised, on record, then wouldn't no condos or homes will be affected by these noises and smells? There are no condos on the channel just a football field east of the footbridge, it's all marsh wetlands all the way to the Lincoln bridge. We need to learn more on why that plan was ceased? Was it for environmental reasons, and if so what environmental reasons would be different 100 yards down the channel?</p> <p>There is just way too much to unpack, discuss, learn, and gather as far as more data before making this massive & permanent decision that will greatly impact our community and community members!</p> <p>PLEASE CONSIDER PUTTING THIS ON HOLD!!</p>
			Mara Barbierato	<p>PLEASE CONSIDER PUTTING THIS ON HOLD!!</p> <p>I'm strongly opposing this at this time.</p> <p>There is just way too much to unpack, discuss, learn, and gather as far as more data before making this massive & permanent decision that will greatly impact our community and community members!</p>
			Martin Ehleben	
			Patricia Heller	



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

Correspondence Received

			The following individuals submitted comments on agenda item:	
Agenda #	Relate To	Position	Name	Comments
54.		Oppose	Robert Kailes	<p>Dear Supervisors,</p> <p>I request that you either table Item 54, vote concerning the Interceptor in Ballona Creek, or vote simply against it.</p> <p>What has been presented to you and the public has been only what the Department of Public Works wants you to know for approval but downplays or misrepresents both alternatives and their long time goal of implementing it as the permanent solution to trash in Ballona Creek.</p> <p>It is there ultimate intention to:</p> <p>Remove the three booms capturing the trash, both in their "pilot project" which will harm the environment by allowing that trash to flow through the wetlands to the Interceptor.</p> <p>Not proceed with the Alla Trash Capture Project which will:</p> <p>Capture more and smaller trash and pollutants upstream from the wetlands.</p> <p>Has been strongly supported by agencies and organizations.</p> <p>Going forward with the Interceptor will cause more harm and damage to the environment.</p>
			Sara Brown	<p>We need more information! Please see that there are many unanswered questions and issues that need more considerable thought and investigation before permanently installing the interceptor on the hip of our community.</p>

			The following individuals submitted comments on agenda item:	
Agenda #	Relate To	Position	Name	Comments
54.		Oppose	Sara Nagel	<p>I'm strongly opposing this at this time. Please please please consider that there are SO many unanswered questions and issues that need deep, careful, and thoughtful investigation before permanently installing the interceptor on the hip of our community and next to our homes!</p> <p>The concern is not just the view being mildly obstructed, and it's not just the decibel levels of the unmanned machine. It's several other concerns that we need to understand and consider before making the permanent decision of where it will sit and live for the long haul because as you can see on YouTube videos these interceptors are not typically installed near quiet & quaint little communities like Playa. Consider how that motorized conveyor belt will be non-stop shattering & clanking glass bottles being dropped into the bins, clanking & banging hard metals, crunching plastics, slopping gunk that will be heard all day & all night in this peaceful quiet little beach town that sits in just 25 decibels in the evening. Your interceptor begins at over 70 decibels which is considered "unacceptable" to LA standards in residential areas. And there are other legitimate concerns that are worth discussing as well. Like location & placement of this machine. If the project were to be moved backwards a little further like initially promised, on record, then wouldn't no condos or homes will be affected by these noises and smells? There are no condos on the channel just a football field east of the footbridge, it's all marsh wetlands all the way to the Lincoln bridge. We need to learn more on why that plan was ceased? Was it for environmental reasons, and if so what environmental reasons would be different 100 yards down the channel?</p> <p>There is just way too much to unpack, discuss, learn, and gather as far as more data before making this massive & permanent decision that will greatly impact our community and community members!</p> <p>PLEASE CONSIDER PUTTING THIS ON HOLD!!</p>
			Thomas Andrews	I strongly Oppose moving forward with this project at this time. The location and information on how this will directly affect our community is very concerning and should be reviewed and studied further and shared with the members of Playa Del Rey to ensure this is the right pathway for our quiet residential neighborhood.
		Item Total	37	
Grand Total			37	



03/08/2

Dear Supervisor Mitchell,

As a local business of your new district, I am excited to be represented by you and look forward to working alongside yourself and others who strive to better our community.

I wanted to send this letter to voice my support of the promotion and safety of a clean environment for our beaches, parks, and neighborhoods. In particular, I wish to express my full support of the campaign to continue the Ballona Creek Trash Interceptor Project.

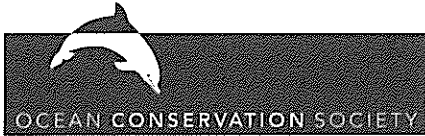
My business, Camp Awesome®, is a summer day camp for kids ages 4-13 that operates directly on the beach, so the cleanliness and safety of the water and beaches in Playa Del Rey is a major concern. With the continuation and advancement of the Interceptor, I strongly believe that the health of our beaches and community could be greatly improved.

In consideration to the wellness and preservation of our local community, I sincerely ask that you give your support to the Ballona Creek Trash Interceptor Project at the current location where it has been studied and permitted.

Best regards,

A handwritten signature in black ink, appearing to read "James Kirlin", is written over a large, stylized, handwritten letter "J".

James Kirlin
OWNER
CAMP AWESOME®



January 13, 2022

Dear Supervisor Mitchell,

I am writing you as the President of the Ocean Conservation Society, a nonprofit organization conducting long-term marine mammal research and educational projects for the protection of the oceans and marine wildlife. We study dolphins, whales, and other species in the wild and use our scientific data to bring about policy changes, raise public awareness, and protect these animals for future generations to appreciate. Our study area includes the waters off Los Angeles and we conduct monthly surveys to learn more about the population of bottlenose dolphins moving along this shoreline.

For this reason, we are very familiar with the amount of trash that ends up in the ocean from Ballona Creek, and consequently, we are in total support of the *Ballona Creek Trash Interceptor Project*.

It's clear that the existing system of removing trash from Ballona Creek is not effective and there is a need for a new, more efficient technology. The Interceptor has a unique approach for trash collection that will improve water quality and reduce the amount of debris in our local waters.

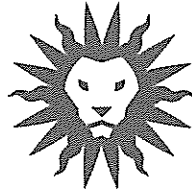
Because The Ocean Clean Up has provided the *Trash Interceptor* at no cost to your constituents, this is a remarkable opportunity to address local pollution and help the animals that we are studying for over two decades.

We ask that you please give your full support to the *Ballona Creek Trash Interceptor Project* at the current location (west of Pacific Ave bridge) where it has been studied and permitted.

If you would like more information on our current work, or if you have any questions, please don't hesitate to contact me directly

Sincerely,

Maddalena Bearzi
President
Ocean Conservation Society, Inc.



January 20, 2022

Dear Supervisor Mitchell,

I am the Head Coach of the beach volleyball team at Loyola Marymount University and our team is excited to be represented by you and grateful for your service to our county.

Our beach volleyball team practices at the beach in Playa Del Rey. The student athletes use the beach almost every day and are very familiar with the copious amounts of trash that winds up on the beach from Ballona Creek.

LMU Beach Volleyball fully supports the Ballona Creek Trash Interceptor Project at its current location (west of Pacific Ave Bridge) where it has been studied and permitted. Many people were involved in all aspects of this process, and the public was given the opportunity to participate in that process.

60,000 pounds of trash is dumped annually into the creek from City storm drains. Millions of wildlife are being affected by the pollutants that enter the Santa Monica Bay at each rainfall. Additionally, we have seen this environmental disaster wash up onto the beach and bike path creating a public safety hazard.

The current system of removing trash from the Ballona Creek is an ineffective net spanning across the creek. This system only collects 21,000 pounds of trash an annual storm season.

The Interceptor is an innovative approach that will improve water quality and reduce the amount of debris in our unique and environmentally precious Santa Monica Bay. The maximum extraction rate from the Interceptor is 110,000 pounds per day.

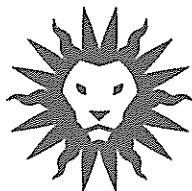
The Interceptor is also a visual reminder that keeps the community engaged and aware that source pollution must be prevented from contaminating our ocean and destroying this natural resource.

The Ocean Clean Up has provided the Interceptor at no cost to your constituents. This is an amazing opportunity to rid our ocean and coastline of plastic and trash pollution and leave a legacy for future generations.

We ask that you give your full support to the Ballona Creek Trash Interceptor Project at the current location (west of Pacific Ave bridge) where it has been studied and permitted.

Sincerely,

John L. Mayer
Head Coach Beach Volleyball
Loyola Marymount University





Men's Crew and Women's Rowing
Department of Intercollegiate Athletics

Leavey Athletic Center
Suite B
1 LMU Drive
Los Angeles, California
90045-2659

www.lmu.edu
www.lmulions.com

January 21, 2022

Dear Supervisor Mitchell,

LMU has been a partner in building relationships within the community since 1918. Rowing has been a part of LMU athletics since 1961. Throughout that time frame the athletes of our rowing program have enjoyed the waterways of Marina del Rey. We on the rowing staff have been fortunate to use the Ballona Creek as a training and racing zone for our athletes. As residents of your district, we are excited to be represented by you and grateful for your service to our county.

We at LMU fully support the Ballona Creek Trash Interceptor Project at its current location west of Pacific Ave Bridge. We were involved in early discussions about the placement of the interceptor and feel that it will serve our community by minimizing waste discharge into our ocean.

It is estimated that over 60,000 pounds of trash is dumped annually into the creek from City storm drains. Millions of wildlife are being affected by the pollutants that enter the Santa Monica Bay at each rainfall. The Interceptor is an innovative approach that will improve water quality and reduce the amount of debris in our unique and environmentally precious Santa Monica Bay.

The proposal to move forward with planning and implementation of the trash Interceptor will benefit your constituents. This is an amazing opportunity to rid our ocean and coastline of plastic and trash pollution and leave a legacy for future generations.

From our entire staff, we ask that you give your full support to the Ballona Creek Trash Interceptor Project at the current location (west of Pacific Ave bridge) where it has been studied and permitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Huhta", written over a horizontal line.

Karl Huhta
Director of Rowing
& Women's Head Coach

A handwritten signature in black ink, appearing to read "Julia Gamache", written over a horizontal line.

Julia Gamache
Head Men's Rowing Coach

PLAYA DEL REY GUARDIANS SOCIETY, INC.
216 Montreal Street
Playa del Rey, CA 90293

February 11, 2022

Dear Supervisor Mitchell,

The Playa del Rey Guardians Society enthusiastically supports the Pilot Project for the Ballona Creek Trash Interceptor.

The Interceptor will make our community cleaner and safer for the residents, businesses and the many beach visitors that come from all over Los Angeles to visit our special community and our beautiful beaches.

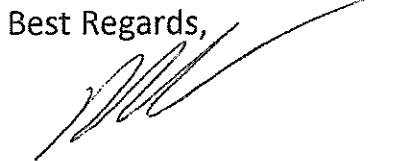
As you know the Ballona Creek drains into the Pacific Ocean and runs parallel to the protected Ballona Wetlands.

I hope that you will support the Ballona Creek Trash Interceptor Pilot Project moving forward so that this much needed Project may come to the City of Los Angeles and our community for the benefit of all residents, businesses and visitors.

We must protect these precious natural resources so that they are there for all to enjoy now and into the future.

Thank you for your consideration.

Best Regards,



Julie Ross

Vice-President

Playa del Rey Guardians Society, Inc. a 501C3



January 5, 2022

Dear Supervisor Mitchell,

As residents of your new district, we are excited to be represented by you and grateful for your service to our county.

Friends of the Jungle (FOTJ) is a nonprofit community organization based in Playa Del Rey. We have been a voice for many residents in Playa Del Rey & the surrounding communities. We host an annual beach clean up and are very familiar with the copious amounts of trash that winds up on the beach from Ballona Creek.

(FOTJ) fully supports the Ballona Creek Trash Interceptor Project at its current location (west of Pacific Ave Bridge) where it has been studied and permitted. Many people were involved in all aspects of this process, and the public was given the opportunity to participate in that process.

60,000 pounds of trash is dumped annually into the creek from City storm drains. Millions of wildlife are being affected by the pollutants that enter the Santa Monica Bay at each rainfall. Additionally, we have seen this environmental disaster wash up onto the beach and bike path creating a public safety hazard.

The current system of removing trash from the Ballona Creek is an ineffective net spanning across the creek. This system only collects 21,000 pounds of trash an annual storm season.

The Interceptor is an innovative approach that will improve water quality and reduce the amount of debris in our unique and environmentally precious Santa Monica Bay. The maximum extraction rate from the Interceptor is 110,000 pounds per day.

The Interceptor is also a visual reminder that keeps the community engaged and aware that source pollution must be prevented from contaminating our ocean and destroying this natural resource.

The Ocean Clean Up has provided the Interceptor at no cost to your constituents. This is an amazing opportunity to rid our ocean and coastline of plastic and trash pollution and leave a legacy for future generations.

We ask that you give your full support to the Ballona Creek Trash Interceptor Project at the current location (west of Pacific Ave bridge) where it has been studied and permitted.

Sincerely,

Lucy Han
President
Friends of the Jungle

FRIENDS OF THE JUNGLE • 7025 TROLLEYWAY, PLAYA DEL REY, CA 90293
(310)486-5511 • INFO@FOTJ.ORG • WWW.FOTJ.ORG



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 7, 2022

Holly J. Mitchell, Los Angeles County Supervisor, 2nd District
Los Angeles County Board of Supervisors
500 West Temple Street, Room 866
Los Angeles, CA 90012
Email: HollyJMitchell@bos.lacounty.gov

Subject: Letter of Support for Ballona Creek Trash Interceptor Pilot Project

Dear Supervisor Mitchell:

The California Department of Fish and Wildlife (CDFW) South Coast Region writes in support of the Ballona Creek Trash Interceptor Pilot Project (Project) as proposed for installation west of the Ballona Creek Bridge at Pacific Avenue by the Los Angeles County Flood Control District (County).

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. It is the mission of CDFW is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

CDFW staff have reviewed the Project and met with County project managers on several occasions since December 2019. This Project features the installation of an automated floating trash capture device near the mouth of Ballona Creek during a limited pilot study period. The Project's objective is to improve water quality by removing plastic and other floating trash from Ballona Creek before it can enter Santa Monica Bay and the broader Southern California Bight.

CDFW supports the Project in concept as a means of stopping trash before it can reach downstream waterways. CDFW believes that this Project would benefit fish and wildlife resources on a local and regional scale in Ballona Creek and the Southern California Bight, respectively. The Ballona Creek estuary offers critical ecosystem services to fish and wildlife as well as recreational opportunities to the public. This waterway includes one of the last remaining coastal wetlands in Los Angeles County. The greater Southern California Bight features miles of popular sandy beaches, rocky tidepools, kelp forests, tidal lagoons, and coastal wetland habitats that support a great diversity of life and public enjoyment of natural resources. The Project is intended to be one of several redundant methods of capturing trash from the urban Ballona Creek watershed. Reducing and removing trash from each local watershed helps to prevent land-based pollution from spreading to the ocean and becoming a regional marine debris problem. Improved capture of floating trash would likely reduce the risk of direct physical hazards to fish and wildlife such as entanglement, suffocation, or ingestion. Addressing marine plastic pollution would help to safeguard seafood safety, human health, and coastal tourism. CDFW supports the County as well as State agencies like the Los Angeles Regional Water Quality Control Board in their efforts to reduce pollution and improve water quality.

Supervisor Holly J. Mitchell
Los Angeles County Board of Supervisors
February 7, 2022
Page 2 of 2

The Project is a limited pilot study that should include close monitoring for its efficacy and potential benefit to fish, wildlife, and waterways. We look forward to seeing these monitoring results and wish this Project much success.

CDFW South Coast Region staff have closely reviewed proposals for the County's Ballona Creek Trash Interceptor Pilot Project and lend their support for its implementation. We respectfully request your support for this project.

If you have questions regarding this letter, please contact David T. Lin, Senior Environmental Scientist (Specialist), at (562) 619-0509 or by email at David.Lin@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Ed Pert

A87CE892DB57479...

Edmund Pert
Regional Manager
South Coast Region

cc: California Department of Fish and Wildlife

Erinn Wilson-Olgin, Environmental Program Manager
South Coast Region
Erinn.Wilson-Olgin@wildlife.ca.gov

Victoria Tang, Senior Environmental Scientist (Supervisory)
South Coast Region
Victoria.Tang@wildlife.ca.gov

David T. Lin, Senior Environmental Scientist (Specialist)
South Coast Region
David.Lin@wildlife.ca.gov

Richard Burg, Environmental Program Manager
South Coast Region
Richard.Burg@wildlife.ca.gov

Richard Brody, Senior Environmental Scientist (Specialist)
South Coast Region
Richard.Brody@wildlife.ca.gov



E Read and Associates, Inc.

Ecological Surveys, Restoration, Maintenance, and Monitoring
368 South Grand Street, Orange, CA 92866
P 714.366.8857 marshmistress@msn.com

February 9, 2022

Re: Support for the Ballona Creek Trash Interceptor Pilot Project

Dear Supervisor Mitchell,

As manager of the Ballona Freshwater Wetlands, a natural treatment wetland and wildlife habitat located adjacent to the Ballona Wetlands Ecological Reserve, I am keenly aware of the importance of every effort to keep Ballona Creek clean. We have three storm drain inlets to the Marsh with racks in place to capture trash so that my crew can remove it after storms before it passes through the Marsh and out to Ballona Creek. This manual labor, as well as booms across Ballona Creek and massive volunteer efforts to remove trash along Ballona Creek itself during Coastal Cleanup Days, have not been sufficient to keep up with the tons of trash that ultimately end up on the beach and in Santa Monica Bay.

I have seen presentations to the community about the project and understand that this is a first step to see if this technology will be more efficient and cost-effective than current measures. While I have concerns about wildlife and aquatic creatures getting trapped along with the trash, I expect this will be monitored. I also expect that impacts to wildlife, if any, from this project will be significantly less than current hazards from plastics and discarded fishing lines that will continue if this pilot effort is not given a chance.

Edith A Read
President and Senior Ecologist, E Read and Associates Inc.



**NEIGHBORHOOD
COUNCIL**

PRESIDENT
Matt Wersinger

VICE-PRESIDENT
Ravi Sankaran

TREASURER
Daniel Perez

SECRETARY
Brent Goshen

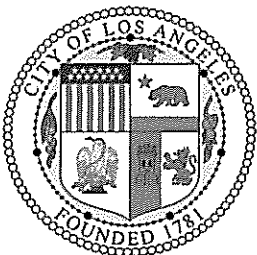
COMMUNICATIONS OFFICER
Alejandro Arroyo

LAND USE OFFICER
Pooja Bhagat

OUTREACH OFFICER
Jillian Hegedus

AREA DIRECTORS
A: Theresa Gamache
B: Anne Kaplan
C: Kristine Rezny
D: Adriana De La Cruz
E: Peter Kunkle
F: Monica Franklin
G: Maria del Carmen
H: Greg Turquand

Del Rey
Neighborhood Council
4325 Glencoe Ave #9365
Marina del Rey, CA 90292
board@delreync.org
www.delreync.org
empowerla.org/drnc



January 17, 2022

Councilmember Mike Bonin
Los Angeles City Council District 11
200 N. Spring St. #475
Los Angeles, CA 90012

Dear Councilmember Bonin,

On January 13, 2022, the Del Rey Neighborhood Council (DRNC) approved a motion supporting the Interceptor trash diversion project. The project was originally approved by the LA County Board of Supervisors in November 2019 and authorizes the installation of an advanced river cleanup system in the Ballona Creek to collect debris that would otherwise flow into the ocean. The DRNC motion states the following:

The DRNC requests that the LA City Council support the Interceptor trash diversion pilot project as approved by LA County to proceed as planned in Ballona Creek in 2022, which is expected to divert more than 50% of the approximately 60,000 pounds of trash per year that flow into the ocean through the mouth of the creek.

As the project location is in LA County Supervisor Holly Mitchell's district, the DRNC requests that Councilmember Bonin communicate the City Council's support to Supervisor Mitchell to allow the project to proceed as originally planned for the benefit of local stakeholders.

Regards,

Matt Wersinger
President, DRNC

Cc: LA County Supervisor Holly Mitchell

Attachment: Executed agreement between the Los Angeles County Flood Control District and The Ocean Cleanup Interception, dated November 15, 2019

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
PHONE (562) 590-5071



April 28, 2021

Coastal Development Permit De Minimis Waiver Coastal Act Section 30624.7

Based on the project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

Waiver: 5-20-0599-W

Applicant: Los Angeles County Public Works

Location: Ballona Creek (seaward of Ballona Creek Bridge), City of Los Angeles, Los Angeles County.

Proposed Development: Deploy a floating, automated trash interceptor system that is fully solar powered near the mouth of the Ballona Creek. The system will be moored to the Ballona Creek North and South Jetties and will be in-place as a pilot program for three years.

Rationale: The project site is located in the City of Los Angeles, between the communities of Marina del Rey and Playa del Rey, approximately 1.5 miles west of Pacific Coast Highway and 0.5 mile east of the Santa Monica Bay. The project site is characterized by a wide, concrete embankment of Ballona Creek channel trending from east-northeast (upstream) toward the west-southwest (downstream). The location is zoned Open Space (OS-1XL) by the City of Los Angeles Municipal Code. The project will deploy a floating, automated trash interceptor system near the mouth of Ballona Creek where it enters the Pacific Ocean. The purpose of the pilot project is to test the efficiency of the system in capturing and collecting floating trash and debris in Ballona Creek and preventing it from entering and polluting the ocean. The system is composed of a steel catamaran hull, trash boom barriers that extend off the vessel to guide trash and marine debris onto a low-speed conveyor built on the vessel, and a shuttle that distributes trash into six trash receptacles located at the top of the barge. When the trash receptacles are almost full, an automatic message will be sent to local operators to remove the waste and bring it to a solid waste facility, outside the Coastal Zone. The system will be approximately 25.9 feet wide x 77.6 feet long x 19.4 feet high. The project would not adversely impact public access in the area. Additionally, the proposed project will not prejudice the City's ability to prepare a certified Local Coastal Program and is consistent with the designation in the City's certified Land Use Plan, previous Commission action in the area, and Chapter 3 policies of the Coastal Act.

This waiver will not become effective until reported to the Commission at its **May 12-14, 2021** meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The Notice of Pending Permit shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

John Ainsworth
Executive Director

Christine Pereira
Coastal Program Analyst

cc: File

From: Deb Gregory <deb.gregory@ballonacreek.org>
Date: December 21, 2021 at 5:50:47 PM PST
To: HollyJMitchell@bos.lacounty.gov, mwrait@bos.lacounty.gov
Cc: Sandrine Cassidy <sandrine.cassidy@ballonacreek.org>
Subject: **Welcome and Interceptor input**

Dear Supervisor Mitchell and Team,

A hearty welcome to you all in your new district! We look forward to working together after the dust settles - we certainly enjoyed your warm smile and embracement of our Culver City Ballona Creek Coastal Clean Up Event last September!

As a non-profit environmental advocacy organization and stewards of Ballona creek, we like to think of ourselves as playing well with others and strive to create a welcoming atmosphere to other non-profits with relevant missions. We are an all-volunteer group yet mighty in some of our accomplishments over the 25+ years in existence. Focused on trash diversion, native planting, educational outreach to residents of our watershed region, we represent the place "Where the Creek meets the Community". In the past 10 years we have really focused on our trash diversion numbers by offering up to 12 public creek clean up events annually, private events as requested, and our "Takin' it from the Streets!" Campaign during COVID when we couldn't gather in groups; we have diverted up to 2 tons of trash annually from going out into Santa Monica Bay and Pacific Ocean.

I am writing to urge you to support the innovative Ballona Creek Trash Interceptor Pilot Project in the current location where it has been studied and permitted. It will not only help rid our ocean and coastline of plastic pollution but will also, I believe, serve as a symbol of progress for future generations. I like to say that the Interceptor is no Silver Bullet in the grand scheme of trash diversion and we must continue to work on all aspects in trash reduction, but this device has been handed to Los Angeles on a Silver Platter, one that we can all benefit from!

Thank you for your time and support, and please let us know how we can support you in the future. You are always welcome to our events, the next of which will be on Centinela and the Creek on **Saturday February 26th from 9am-noon**. We have hosted up to 200 participants at this location and I'm sure people would love to come out and welcome you in your new position.

Also sharing a video from our board member Blake Hottle, that shows what happens on the creek after a First Flush:
<https://www.youtube.com/watch?v=yekGj0urZs>

Sincerely,

Deborah Gregory, President
Ballona Creek Renaissance (BCR)
Connecting Creek and Community
from the Hills to the Bay

310.313.3300

<http://facebook.com/ballonacreekrenaissance>
www.ballonacreek.org

Instagram: [ballona_creek_renaissance](#)



January 20, 2022

The Honorable Holly Mitchell
Los Angeles County Board of Supervisors
500 West Temple Street, Room 866
Los Angeles, CA 90012

RE: Support for County of Los Angeles' Ballona Creek Trash Interceptor Project

Dear Supervisor Mitchell:

The American Chemistry Council (ACC) is writing in support of the Ballona Creek Trash Interceptor Project at its current location (west of Pacific Ave Bridge). This is an innovative project aimed at capturing and removing trash and marine debris before it reaches the ocean.

ACC is committed to ending plastic waste in the environment. To that end, the plastics industry has taken several steps and partnered with governments, NGOs, and the private sector to identify and deliver solutions to the issue of marine debris. Some of these projects are outlined in the following documents:

- [America's Plastics Makers Support Global Agreement to Eliminate Plastic Waste](#)
[5 Principles to End Plastic Waste Globally | America's Plastic Makers®](#)
- [America's Plastic Makers Promote Circularity to Help Keep Plastic Waste Out of the Marine Environment](#)
[Keeping Plastic Waste Out of the Ocean | America's Plastic Makers®](#)

ACC is also working to increase the recyclability of plastic packaging and create new end use markets for recovered plastics. We recently announced an industry wide goal that 100% of plastic packaging be recyclable or recoverable by 2030 and that all plastic packaging be made with at least 30% recycled plastics by the same date.

With a maximum extraction rate of 110,000 pounds per day, the interceptor is an effective and innovative approach to improving water quality and reducing the amount of debris in the Santa Monica Bay.


Thank you for the opportunity to voice our support for this important project. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ti Sh", followed by a horizontal line.

Tim Shestek
Senior Director, State Affairs
American Chemistry Council



From: Justin Sather theparallelprojects@outlook.com 

Subject: The Interceptor Project

Date: February 4, 2022 at 9:57 AM

To: Holly J. Mitchell hollyjmitchell@bos.lacounty.gov

Cc: Lucy Han lucy@fotj.org, Deb Gregory deb.gregory@ballonacreek.org, Glenn Arnade glenna@gradesofgreen.org, Regan Standlick rcstandlick@gmail.com



Dear Supervisor Mitchell,

This letter is in support of The Interceptor Project in the Ballona Creek. I think this project is important because plastic pollution is becoming a major issue in oceans, landfills, and beaches. People think plastic is being recycled but a majority of it is not being reused. Sadly, a majority of the plastic ends up hurting animals, plants, and humans. We need to put an end to this. By allowing The Interceptor Project to happen we will start to raise awareness about plastic pollution which is the first step to creating change.

Thank you for your time.

Sincerely, Regan Standlick

Dear Supervisor Mitchell
Can you help us get the
Interceptor Project approved
so the Interceptor can help clean
up the 60,000 Pounds of
trash that flows from
the Ballona Creek into
the ocean. All the
plastic is polluting our
beaches, making animals sick,
and getting in our food chain.
PLEASE Help the
turtles! by
Adoni



1.26.22

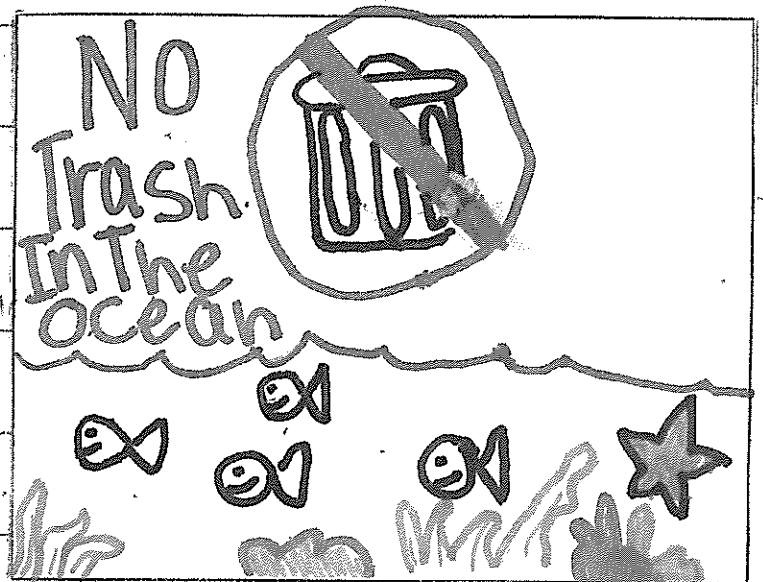
Dear Supervisor Mitchell,

Please help! I am writing this letter to help get the Interceptor into Ballona Creek in Los Angeles. This is important because this machine will help clean out the trash from this creek that leads to the ocean. The animals in the ocean have either been getting caught or eating the trash in the ocean and I, and all my classmates are trying to stop this. The animals in the ocean are very important for our food chain, for example, if the fish die from the trash we will have fish off our menu.

Also, some people rely on fish for food and money. As you can see, marine animals are very important.

Sincerely,

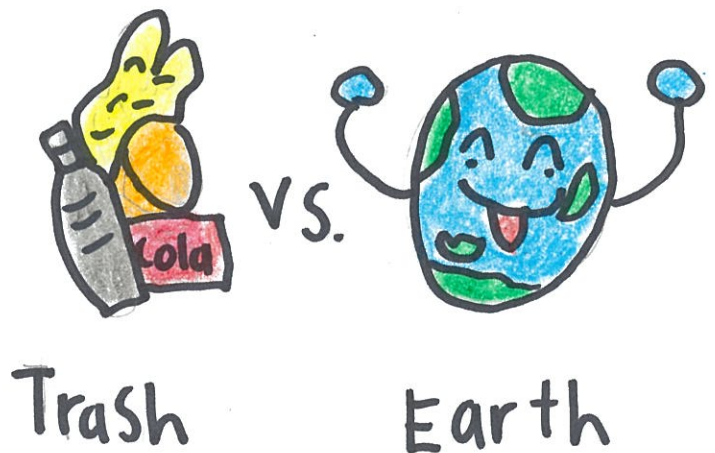
Adrianna



Dear Supervisor Mitchell,

Please set the approval of the Interceptor Project so that we can collect all the trash that is floating into the Ocean. Please do your best to help save the planet!

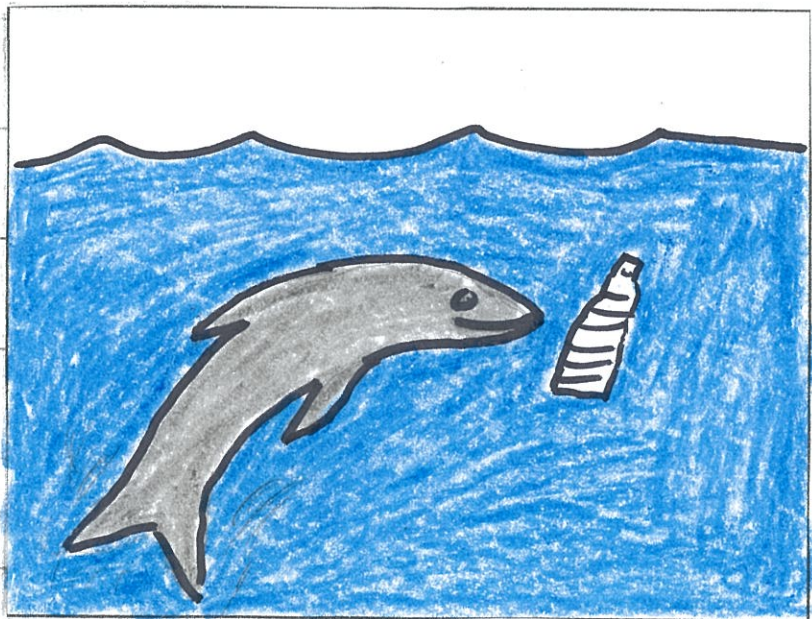
From,
Alex



Dear Supervisor Mitchell, Can you please help us get an Interceptor into the Ballona Creek. Please help us do it because animals are getting sick and suffocating from all the plastic in the ocean. We all need to help get all of the 60,000 pounds from the Ballona Creek. And if you are helping it will be BETTER!

Please Help get all
of the plastic out
of the Creek!

From,
Allie



Dear Supervisor Mitchell,

Can you please help us! I support the Interceptor Project at the Ballona Creek. I do this because I love the ocean, animals, and currently the ocean is full of trash and plastic. I want animals to have a safe place to live and enjoy. Also if we don't help our future children won't know the ocean that we knew! Many fish, dolphins, sea birds, and whales get trapped or eat trash and plastic in the ocean.

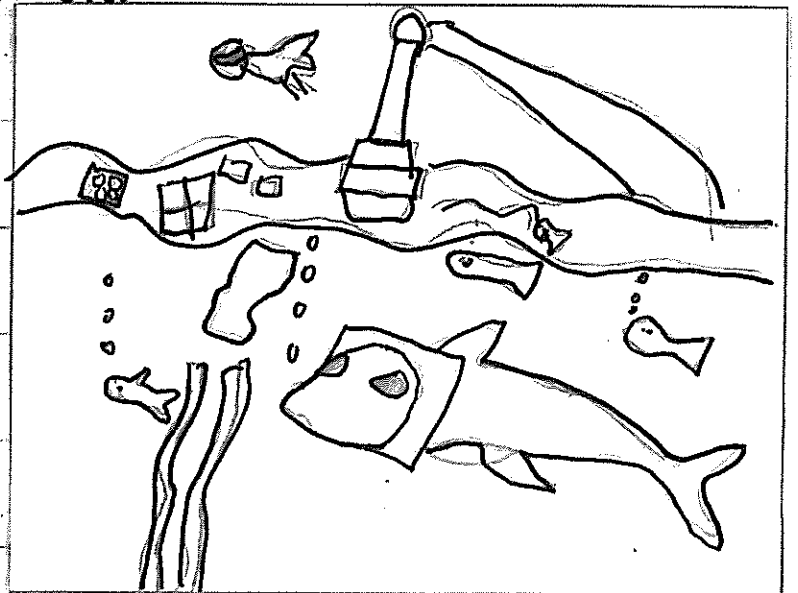
Please help the ocean!

Thank you!

Sincerely,

Andreas Muehlherr

6th Grade



1/26/22

Dear Supervisor Mitchell,

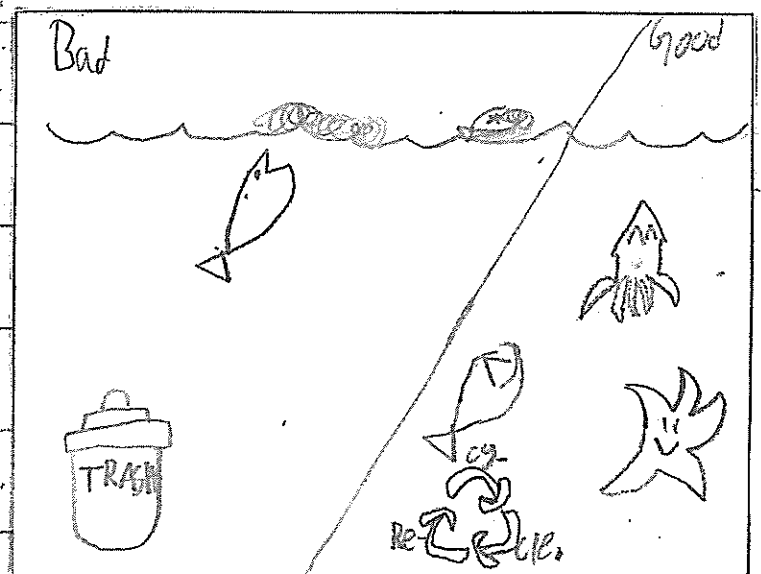
I am writing this letter to help get the Interceptor for Ballona creek in LA. This would help the Rainforests, jungles, coastal biomes, and various animals. This would also help deal with the Garbage Patches. Garbage Patches are sometimes UP TO 3x larger than France. These Problems can be fixed with the Interceptor.

The largest patch is 3x larger than Texas. For reference, Texas is about 300,000² miles. Over 1 million animals die a year due to ocean plastic alone.

We need to SAVE the ocean! Please help get the Interceptor!

Sincerely,

Borna P.



Dear Supervisor Mitchell,

I would really love it if you could make an Interceptor in Los Angeles! It would help the animals so much! It would also help the environment and the earth! So much! The people are throwing plastic not even caring into rivers and the ocean! The plastic is polluting our environment. It's also hurting the beach and making the animals that live at the beach sick! Please help all of us!

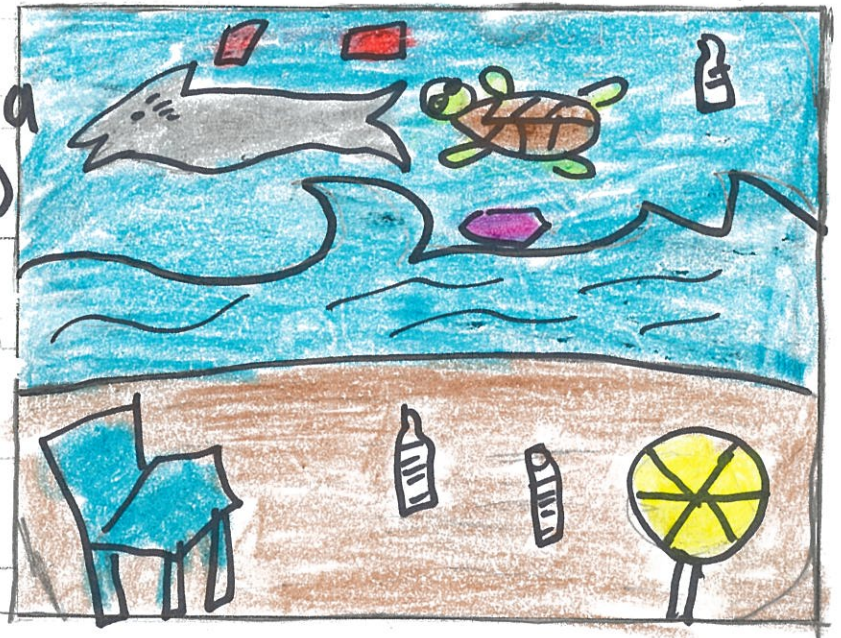
Sincerely,

Brady



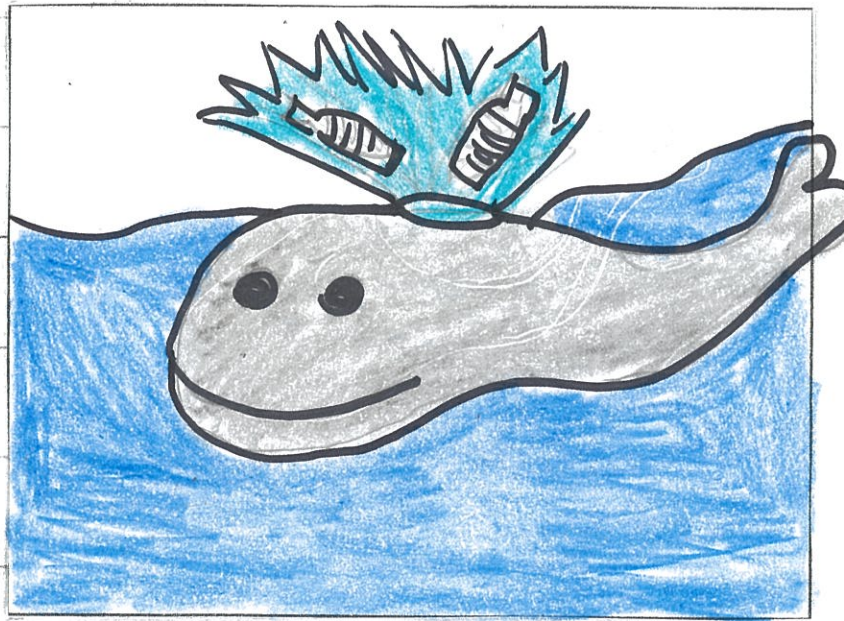
Dear Supervisor Mitchell,
Please help us get more trash out of the
Ocean. The Interceptor will help us clean
60,000 pounds of trash that flows through the
Ballona Creek into the Pacific Ocean. It
will help us a lot if you do. Trash hurts
animals and people. Some animals
can die from eating it and some
get stuck in it. The trash gets in
our food chain and it also makes people
sick too. PLEASE help us

Save the ocean and
animals. From Camila
5th grade (age 10)



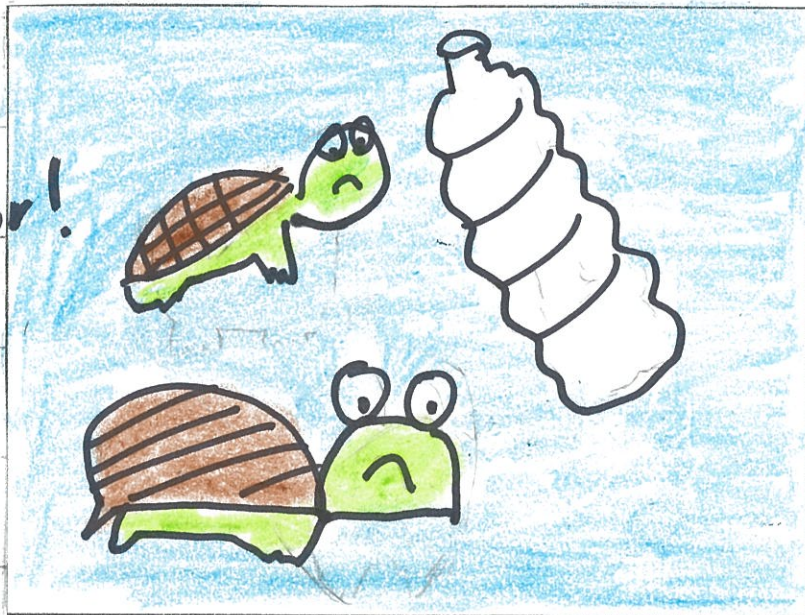
Dear Supervisor Mitchell, Please get the Interceptor approved in Los Angeles to clean up lots of trash flowing from the creel and harming the animals. The trash polluting the rivers is causing them to be sick and stuck on plastic bags and other plastic trash. Please get the Interceptor approved!

From,
Carlos

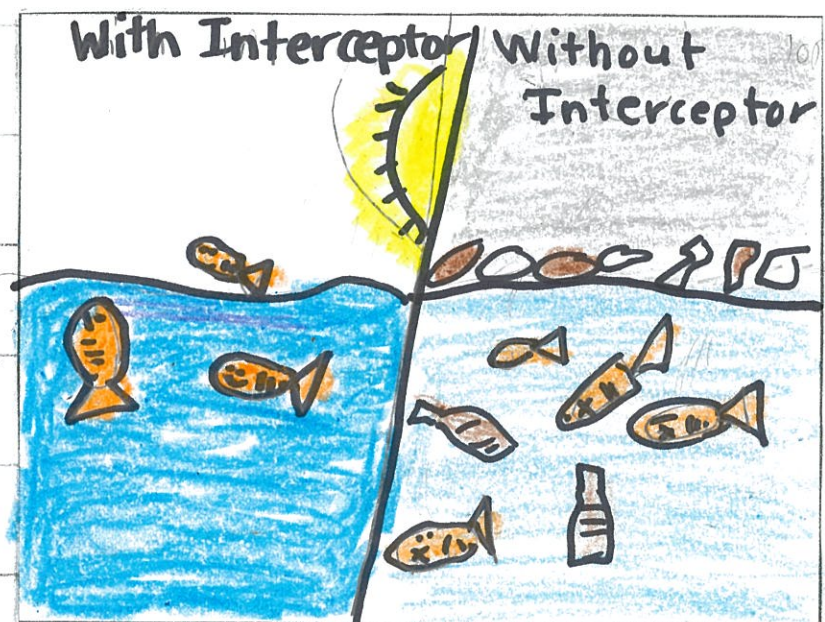


Dear Supervisor Mitchell, Please help us make the Interceptor be approved. Here is my reason why-So there are a few Interceptors around the world but we need more since there is a lot of plastic in the rivers and the ocean. It would also help pick up 60,000 pounds of trash that flow in the Ballona Creek to the ocean and form the great garbage patch. So please help the oceans, rivers, and earth with the Interceptor!

From David Le
Age 10



Dear Supervisor Mitchell, It would help everybody to add an Interceptor. It would first of all, give people a city that they can be PROUD OF. Second, it would help animals live a longer healthier life. Also, who doesn't love baby sea animals. Plus, there's people that move ^{out} to L.A. just to be near the ocean. With all this trash they won't want to go to the beach because the trash and their safety. The pollution is not healthy for humans. PLEASE HELP! From, Dylan Age 11
- Age 11



Please help now or the great
garbage patch will get bigger and
bigger every day. Please help!

Age 10



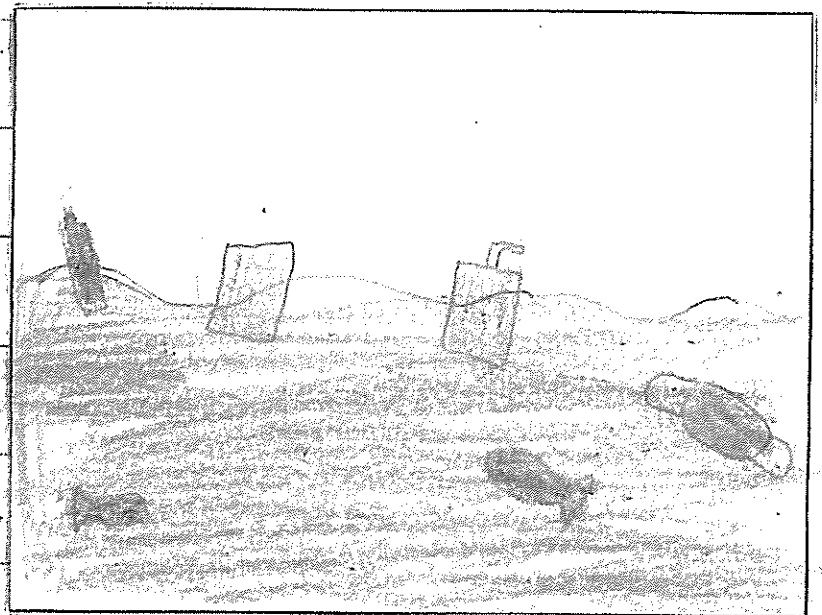
1.26.22

Dear Supervisor Mitchell,

I am writing this letter to help get the Interceptor to Ballona Creek in Los Angeles. This is important to me because many of the animals in the ocean are dying because all of the trash and also it is very bad for the environment. That is why I think it was very good for Boyan Slat to invent the Interceptor to pick up all of the trash!

Sincerely,

Emmy ♡

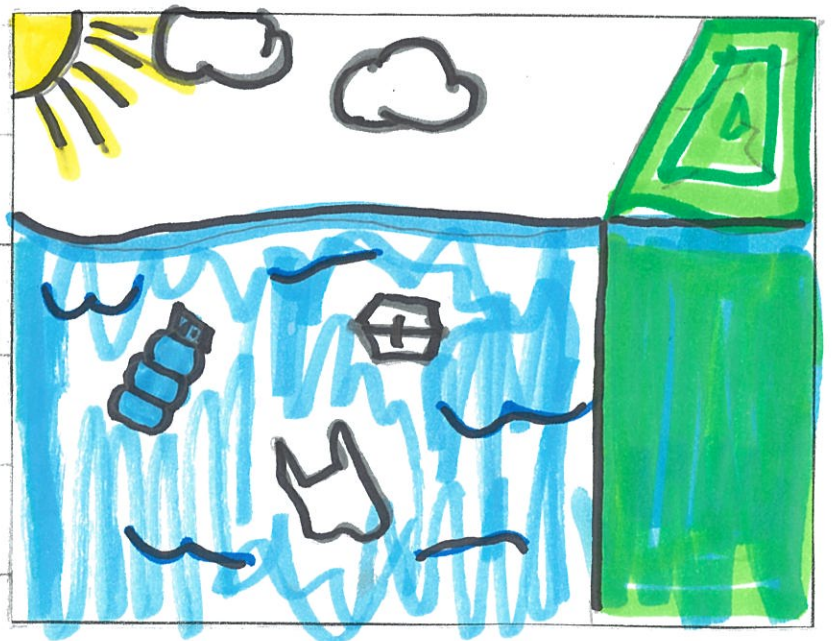


Dear Supervisor Mitchell,
Please help us stop water pollution
by getting The Interceptor Project
approved. By 2050 there will
be more trash in the ocean
than animals in the ocean if
you don't act now. Our planet
could be destroyed!

Please help
and say
yes!

From, Evey/
evelyn

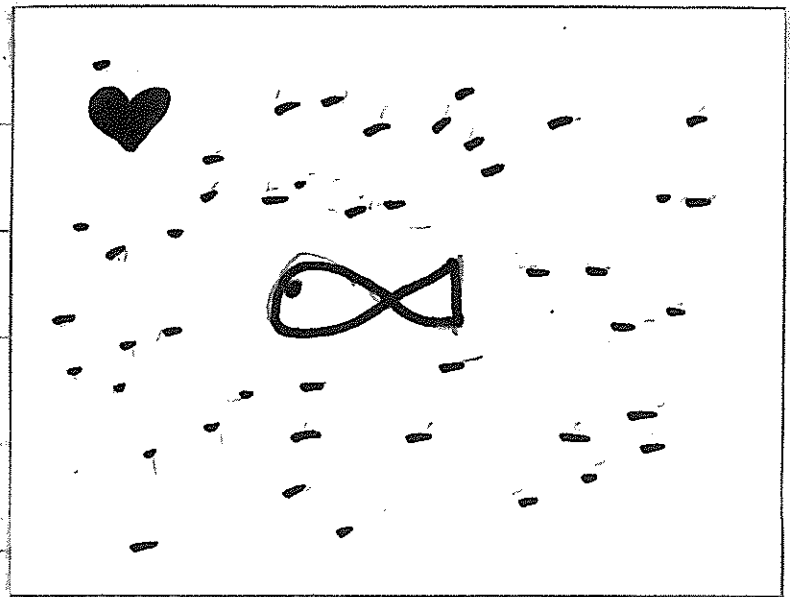
Age: 11



Dear supervisor Mitchell,

Maybe you can help! I support the
Interceptor project at The Ballona Creek
because Our Oceans are full trash and
Plastic. I want the Sea animals to have a
clean place to live. Many fish, Seabirds,
whales, and dolphins eat or get trapped
in the plastic. And I don't like when
living things, beside humans, Suffer cause
our own Waste.

From,
Juliana
2nd grade



Hi! My name is Justin Sather and I am a 5th grader in need of support for my Grades of Green Rise Campaign. My campaign goal this year is to clean up as much plastic from the ocean as possible.

I believe many other local community members want clean local rivers, oceans, and beaches so I'm asking for your support to help get The Ocean Cleanup's Interceptor boat in Los Angeles. This an extraordinary opportunity and we only have a small window of time to move this project forward.

We need as many local students to send a message out to Holly Mitchell (HollyJMitchell@bos.lacounty.gov) stating why they support The Interceptor Project in a letter by January 31st or at your earliest convenience.

Please see the attached suggested prompt to send.



Thank you so much!

Justin Sather

Dear Supervisor Mitchell,
Please help us get the
Interceptor Project approved.
The Interceptor will help clean
up the 60,000 pounds of
trash that flows from the
Ballona Creek into the
Pacific Ocean. All the
plastic is polluting our
beaches, making animals sick,
and getting into our food
chain. Please help!

From,
Justin
Age 11



Dear Supervisor Mitchell,

Thank you for all that you have done for the environment.

The Interceptor project is a great idea. I really hope that you can help us get it approved.

It could pick up ^{tens of} thousands of pounds of trash in rivers. Soon, there will be more trash than animals in the ocean! Please

help! The plastic is getting into our food, polluting our oceans, killing animals, and so many more horrible things. The animals are in danger. If we don't do

something quick,

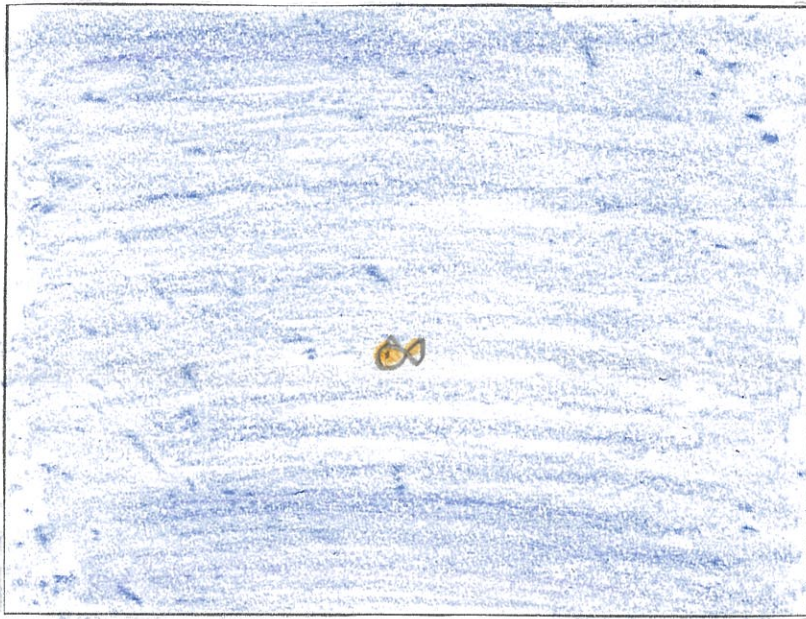
our planet will fall apart! We need

your help! Please

approve the Interceptor

project! Please





Dear Supervisor Mitchell,

Please help us save the ocean by approving the Interceptor. Thousands and thousands of plastic pollute our ocean every day, and by 2050, there will be more plastic in the ocean than there are fish. You can help

do your part by approving the Interceptor Project. The Interceptor would help get rid of some of the dangerous trash in the Pacific Ocean by collecting some of the 60,000 pounds of garbage that flows in from the Ballona Creek. This would help save the marine life that live throughout the Pacific Ocean and would keep the ocean clean. However, if you didn't approve the project, the plastic would slowly build up until the Earth was covered in the filth. Please help do your part in saving the Earth by supporting the mission.

Sincerely,

Michael

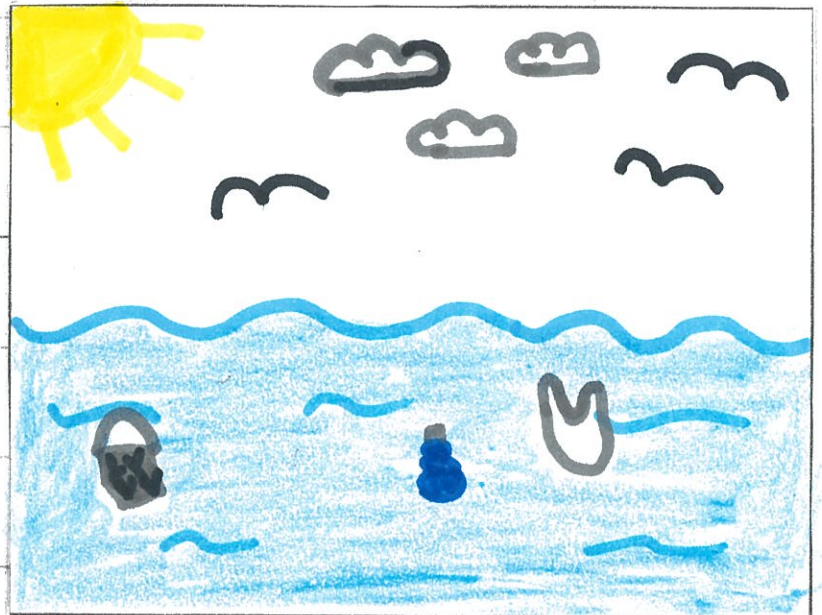
Dear Supervisor Mitchell,

Please help us get the sixth interceptor! The interceptor will help clean up 60,000 pounds of trash that flows from the Ballona creek into the Pacific ocean, and then by 2050 there will be more trash than animals in the Ocean. If you don't act now our world could fall apart.

From,

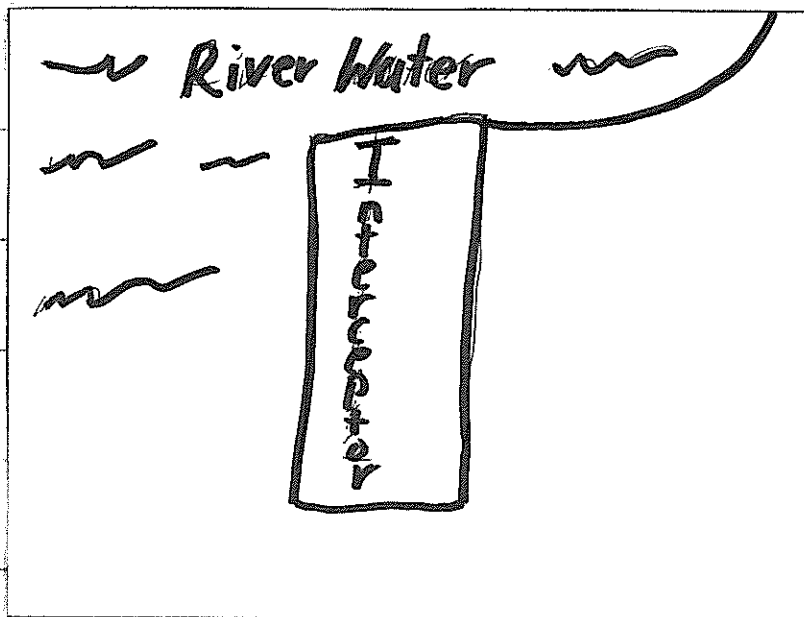
M. Hayla

age 11



Dear Supervisor Mitchell,
please help us get the 6th Interceptor Project
in Los Angeles. The Interceptor will help clean
up the 60,000 lbs. of trash and plastic a year. The
trash that flows from the Ballona Creek out to the
Pacific Ocean is causing major environmental
issues along the Southern California coast line. The
animals and fish are heavily impacted, and many
are dying. Some of these plastics are being ingested
by the fish we eat. This will cause serious medical
problems for the future generations.

Thank you so much,
Mr. Castro
5th Grade Teacher
Poinsettia Elementary
Carlsbad, CA 92009

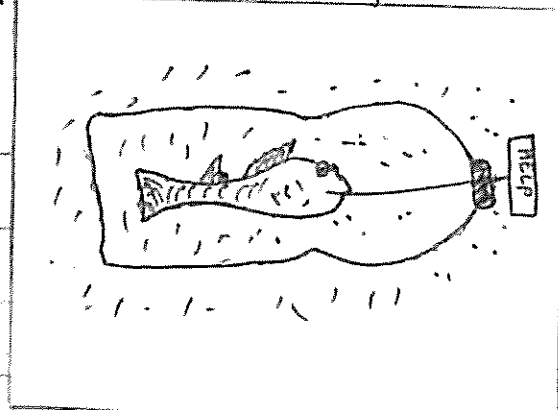


Dear Supervisor Mitchell,

My name is Rashid and I live in Tanzania.
I work with Justin in Los Angeles on The
Parallel Projects Campaign.

We are educating Youth worldwide about
the dangers of plastic. It is a global problem.
Right now we are working with Team Seas and The Interceptor in
The Dominican Republic. Together we have cleaned up over 200 pounds
of trash and plastic. Now we want to support The Interceptor in Los Angeles.
Kids everywhere deserve a clean up ocean. We hope to teach others about
the dangers of plastic and hope to make change to end our plastic pollution crisis.
Please support the Ballona Creek Interceptor Project in Los Angeles.

From, Rashid

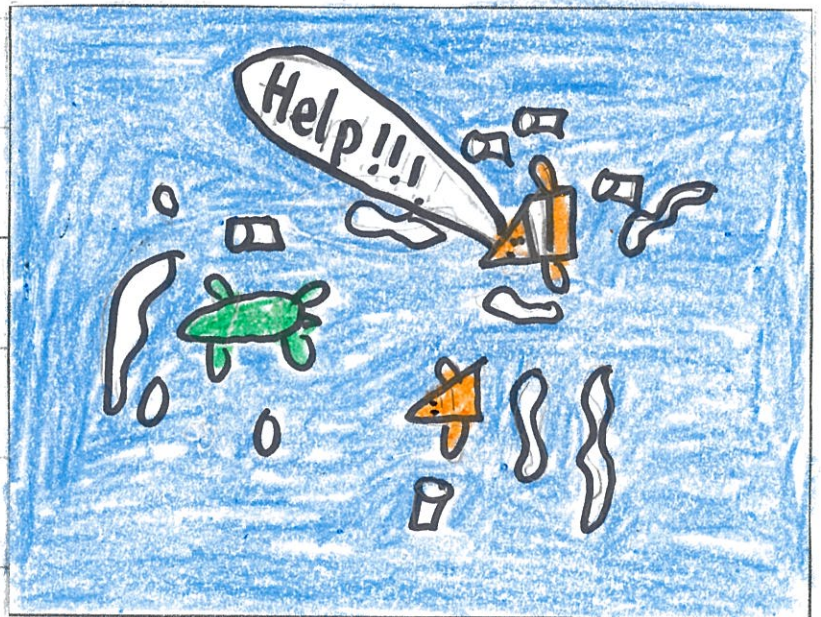


Dear Supervisor Mitchell, Please help us get the Interceptor Project approved. It will clean up so much trash in the rivers and the ocean. I don't want the Sea creatures to die because of trash. If we can get an Interceptor in Los Angeles it would be a good Start.

- Reece age 10



Dear Supervisor Mitchell, Please get another
Interceptor in Los Angeles because it will help
clean up the 60,000 pounds of trash. If somebody
doesn't help the creek will be all trash.
from, Ricardo



Dear Supervisor Mitchel

Can you try to get the approval of The Interceptor Project so that we can collect all of the 60,000 lbs. trash from the Ballona Creek that goes to the Pacific Ocean.

The Interceptor can help the environment plus it will help the sea animals and people too. Please do your best to get the approval of The Interceptor Project to help the Earth.

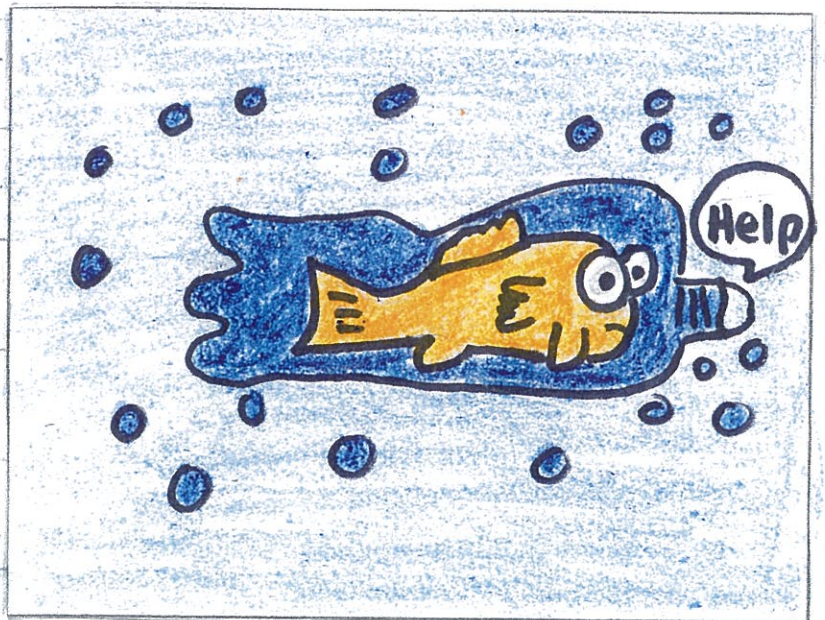
From,
Taisei



Dear Supervisor Mitchell,

Please Help! I Support the Interceptor project at the Ballona Creek because the ocean is full of plastic. I want the sea animals to have a clean place to live. Many of the fish, seabirds, whales, and dolphins eat or get trapped in the plastic.

From, Tyler
3rd grade



Dear Supervisor Mitchell,
Please help us get the Interceptor Project approved. With your help we will be one step closer to cleaning the ocean. If you don't help the ocean will keep getting worse. Pretty soon there could be more plastic than fish in the ocean. Many animals are getting hurt because they think that the trash is food. Turtles eat plastic bags thinking they are jellyfish. Pelicans and seagulls get plastic stuck around their throats. If you help - things will get better.

From,
Zoey
Agell
Fifth grade



From: Omkar Siddeswaran omkarsiddeswaran@gmail.com
Subject: Interceptor Support Letter
Date: February 13, 2022 at 9:03 PM
To: HollyJMitchell@bos.lacounty.gov
Cc: glenna@gradesofgreen.org, lucy@fotj.org

OS

Supervisor Mitchell,

My name is Omkar Siddeswaran and I am a participant in the Grades of Green program living in the Los Angeles Area. Grades of Green is a nonprofit organization that helps students discover and achieve their passion for environmental action. Working with schools across the world, Grades of Green has created a global network of young environmentalists who are able to learn from one another to find solutions to today's and tomorrow's environmental challenges.

As a resident of your new district, I am excited to be represented by you and grateful for your service to our county. Trash on our beaches and in our waterways and oceans is a major concern to me, in particular the 60,000 pounds of trash that flows from Ballona Creek into the Pacific Ocean each year. Millions of wildlife are being affected by the waves of trash that enter the Santa Monica Bay at each rainfall.

We all have to do everything in our power to stop it, through strong policy, education, cleanups and breaking with the status quo. We urge LA County to pursue multiple solutions that address plastic pollution and other trash in Ballona Creek. Specifically, we ask you to give your full support to the innovative [Ballona Creek Trash Interceptor Pilot Project](#) at the current location where it has been studied and permitted. The Interceptor will help with trash collection [in a state of the art way](#). Success of the pilot project will mean capture by the Interceptor of at least 50% of the plastic trash flowing down Ballona Creek. This is an amazing opportunity to rid our ocean and coastline of plastic and trash pollution and leave a legacy for future generations.

We hope we can count on your support. This is an amazing opportunity, provided by [The Ocean Cleanup](#), to rid our ocean and coastline of plastic and trash pollution and leave a legacy for future generations.

Thank you for your consideration!

Best Regards,
Omkar Siddeswaran



CORIN L. KAHN

ATTORNEY AT LAW

401 WILSHIRE BOULEVARD, 12th Floor
SANTA MONICA, CALIFORNIA, 90401

TELEPHONE: (424) 252-4714

WRITER'S E-MAIL:
CLKESQ@OUTLOOK..COM

OUR FILE NUMBER:

March 22, 2022

VIA eMail Only

executiveoffice@bos.lacounty.gov

Los Angeles County Board of Supervisors
Hall of Administration
500 West Temple Street, Room 383
Los Angeles, CA 90012

Re: Ballona Creek: Interceptor Project as Partial Implementation of the March 19, 2019 Motion by the Board of Supervisors regarding Ballona Creek

Dear Honorable Members of the Board of Supervisors:

This firm represents the homeowners of the surrounding residential neighborhood and includes a wider group of residents and homeowners of the Playa del Rey area of the County, recreational users of the ("Petitioners.") who are very concerned about the many failures to fully consider the consequences of the planned deployment of a project known as the Interceptor (referred to herein as the "Interceptor" or the "Project.") This letter seeks to persuade the County Board of Supervisors (the "County" or "Respondents" depending on the context) not to move forward with deployment of this Project, and to advise the County that Petitioners are ready to file this letter with the Superior Court in the form of a petition seeking an order to stop that deployment and to take all steps necessary to bring into compliance with the California environmental Quality Act (*Public Resources Code* Sections 21000 *et seq.*, and 14 *Cal. Code of Regs.* Sections 15000 *et seq.* hereinafter "CEQA"), the Project as a part of the totality of the program the County set created by adopting its March 19, 2019 Motion directing the Department of Public Works to develop a comprehensive plan to address the cleaning of the Ballona Creek ("Creek") watershed area including the Creek itself.

If Petitioners deem it necessary, they will seek judicial relief on the grounds that the decisions by Respondents on or about November 5, 2019, to authorize Public Works to enter into a contract with TOC in which the County agreed to accept, free of charge, the Interceptor to be operated and maintained by the County for the purpose of gathering and removing certain forms of garbage from the Ballona Creek for disposal into a landfill, and the accompanying adoption of a Notice of Exemption ("NOE") which is a determination that these activities and a myriad other

events, actions, and changes in the circumstance that occurred during the intervening nearly 30 months are exempt from the procedural and substantive requirements of CEQA.

Petitioners allege that these two actions, and subsequent processing of the matters related to these actions taken by the Board constitute a prejudicial abuse of discretion inasmuch as Respondents have not proceeded in the manner required by law, the decision is not supported by findings, and the findings are not supported by the evidence in the record including in particular failure to comply with CEQA.

II. STATEMENT OF FACTS

A. PHYSICAL ENVIRONMENTAL SETTING

The Ballona Creek is a channelized waterway that drains the watershed of approximately 130 square mile watershed, including parts of the cities of Los Angeles, Beverly Hills, Culver City, Santa Monica, West Hollywood, Inglewood, Westchester, and unincorporated areas within the County.

The channelization of the Creek occurred in or about the 1930s as part of a massive effort to control flood waters during the episodic rain events that occur in Southern California that at times could otherwise be devastating to adjacent neighborhoods. The channelization attempted to follow as much as possible the natural watercourse of the Creek to the Pacific Ocean ("Ocean") where the Creek empties some 9 miles from the origin of the channel. located within the City of Los Angeles at or about Cochran Ave. near Venice Boulevard.

The water enters the Creek through a series of storm drains located throughout the watershed. Therefore, in addition to extraordinary volumes of rainwater during episodic rain events, the Creek has water during what is referred to as the dry-weather periods that occur it at all times from urban run off.

A bicycle path runs the entire length of the Creek from the beginning of the channel to the ocean. The bike path is an extremely popular recreational resource used by thousands of hikers and bikers per day on a typical weekend or holiday. At approximately 3 miles upstream from the ocean, the Centinela Creek contributes water to the Creek. At approximately 4 miles upstream from the ocean, the Sepulveda Channel contributes water to the Creek.

The last approximately 1.75 miles of the Creek involve several critical environmental resources. Beginning just downstream of Lincoln Boulevard are an ancient tidal wetlands called the Ballona Wetlands ("Wetlands.") As its name implies the Creek feeds freshwater and tidal water into the Wetlands throughout the year. The Wetlands are approximately 500 acres and 1.75 miles long measured from where the Creek enters the Wetlands to where it has passed the Wetlands, which is approximately 1.75 miles from the ocean. The Wetlands are also provided with ocean water based on tidal water flow. Therefore, as is the case with wetlands throughout Southern California, the water involved in the Wetlands is described as brackish, meaning slightly salty, as is the mixture of river water and seawater in estuaries.

Wetlands in general and the Ballona Wetlands in particular are well recognized as a scarce and precious environmental resource for a wide range of environmental considerations. In or about 2017, a huge commitment was made by several government agencies including the County to the restoration of the Wetlands as proposed by California Department of Fish and Wildlife and the United States Army Corps of Engineers (“Corps.”) That project is scheduled to get underway, perhaps as soon as this year.

The last approximately 1.75 miles of the Creek are separated from the Marina del Rey harbor channel (“Marina Channel”) by a rock jetty that was built in or about the 1960s and is maintained by the Corps at this location, the Creek ranges in depth depending on the tide. It is in this location that college crew teams practice their rowing. UCLA maintains an athletic center within the Marina Channel just downstream of the Creek of the Wetlands.

The several miles long jetties on both sides of the Creek, maintained by the County by its Division of Beaches and Harbors, provide recreational opportunities well used access to persons fishing, walking, and viewing the boats entering and exiting the Marina Channel. Beyond both the Marina Channel and the Creek is a long rock breakwater that protects by deflecting ocean storm tides away from both of these discrete bodies of water. That breakwater is a well-used and widely recognized sea mammal “haul out.” “Hauling-out” typically occurs between periods of foraging activity. Rather than remain in the water, pinnipeds haul-out onto land for reasons such as reproduction and rest.

B. OTHER MATERIAL FACTS INVOLVING THE ENVIRONMENTAL SETTING

All of California, but more particularly and severely, Southern California is experiencing a long cycle of drought conditions. It has been generally accepted among climate scientists, that this cycle is long-term. And because current efforts to address this issue seem to be in its infancy, and there is little evidence of significant changes in the behavior of most people, this phenomenon is anticipated to last into the foreseeable future and will likely be exacerbated by also well recognized and accepted among climate scientists as the general warming of the earth generally referred to in policy making and legislation as “climate change.”

The State Legislature has been taking steps to prepare the State for the long-term effects of Climate Change since at least 2006 by Executive Orders and by the Legislature’s regular enactment of various land use and transportation schemes since then.

On November 6, 2018, voters enacted Los Angeles County Measure W (“Measure W”) by an overwhelming majority consisting of very nearly 70% of those who voted. Measure W was described on the ballot as an ordinance for the purpose of: “improving/protecting water quality; capturing rain/stormwater to increase safe drinking water supplies and prepare for future drought; protecting public health and marine life by reducing pollution, trash, toxins/plastics entering Los Angeles County waterways/bays/beaches; . . . raising approximately \$300,000,000 annually until ended by voters. . . .”

There are two aspects of Measure W that are of particular concern in this petition: 1) “reducing pollution, trash, toxins/plastics entering Los Angeles County waterways/bays/beaches” and 2) “capturing rain/stormwater to increase safe drinking water supplies and prepare for future drought.”

Los Angeles County has been and remains actively involved in many programs to limit the amount of pollutants that could enter the Creek. Despite significant combined effort by the municipalities that comprise the watershed area and the County to prevent pollutants from entering the Creek, the County has been developing and enhancing the means to capture significant amounts of garbage, one prevalent and particularly visible form of pollutants, that at times inundates the Creek. For the past 4 years, the County self-reports that it has removed 37, 27, 10 and 26 tons of garbage from the Creek for each of those years, respectively. Petitioners are informed and believe that to date, little or perhaps nothing at all has been or is currently being done to prevent two very significant pollutants known to enter the waters of the Creek and into the Ocean: 1) microplastics, roughly defined as “small plastic pieces less than five millimeters long which can be harmful to ocean and aquatic life; and 2) toxins. The County self-reports that among the many toxins that flow to the Ocean by means of the Creek.

The method the County presently employs is three trash inhibiting booms stretched across the Creek that intercept all or virtually all of the floating trash and at least some of the trash that is not floating on the surface of the water is also captured before it flows down the entire length of the Creek, into the Ocean, and then washing up onto the shore line throughout the Santa Monica Bay, or floating out to sea. Then, from time to time, employees of the Department’s Stormwater Division, physically extract the garbage caught behind the boom and haul it to a land fill.

Petitioners are informed and believe that the County has not employed all economically feasible methods of removal of the garbage from the booms, including frequency, such that infrequently, limited amounts of garbage escape this system of floating booms which then flows down the Creek into the Ocean. The likelihood of this occurring is greatly increase by a major storm event. Nevertheless, the current system deployed by the County to intercept and remove the garbage as one part of a comprehensive program to do so, objectively has been a substantial success, measured in part by annual improvements of the measures OF water quality within the Bay and at nearby beaches.

C. BASELINE

The County also has not been forthcoming regarding the baseline. Based on the Plan submitted to each Supervisor dated October 1, 2019, Public Works promised to improve the technology used to float the trash intercepting boom and add two additional booms to gain better control over the garbage, especially during high water surge events. This was in fact implemented in or about 2020. The record contains no evidence about the efficacy regarding this intervening solution that the Interceptor is intended to address that was implemented subsequent to the vote of the Board to authorize Public Works to partner with TOC. In other words, there is a new baseline and there is not information about it. The significance of that there is no evidence

in the record that the Interceptor will be deployed to solve any problem. There simply might not be one. If so, then the Interceptor is a solution in search of a problem.

D. PROJECT DEVELOPMENT AND PROJECT REVIEW

To further enhance the efficacy of this system in or about March 19, 2019, the County, by its Board of Supervisors approved a motion directing Public Works to report back on trash reduction efforts associated with Ballona Creek (the “Motion.”)

Based on the language of the motion, its purpose was to advance on-going efforts by County in coordination with the municipalities that comprise the watershed area of the Ballona Creek to identify alternative “trash and debris collection and removal methods” and including a coordinated effort to obtain grant “opportunities for future in-channel solutions” The motion identified 5 specific alternatives the County requested be evaluated. Petitioners contend the County’s adoption of this Motion set into motion the development of a comprehensive plan

In response to the directive set forth in the Motion, on June 17, 2019, Public Works submitted a summary of steps currently being taken by watershed cities to control trash at the source and a report on an evaluation of trash removal options in Ballona Creek. In that report, Public Works committed to promptly initiate preliminary design and concurrently move forward with environmental documents required for grant eligibility. Petitioners are informed and believe that this memorandum was only submitted to the Supervisors, individually, not to the Board as a whole.

On October 1, 2019, Public Works submitted details for its proposed multi-year, multi-agency plan to reduce trash and debris littering (the “Plan.”) that responded to and was consistent with the explicit directions stated in the Motion. In that Plan, in the short-term Public Works represented to the Supervisors that it continued “to enhance trash collection along Ballona Creek . . . including modifications to the existing trash net system located downstream from Lincoln Boulevard . . . [a]dditional design modifications . . . increased the frequency of the trash removal . . . two additional trash net systems . . . and the Department of Beaches and Harbors operates a skimmer boat and two fixed trash skimmers and conducts daily letter removal along the beaches.”

Also in The October 1, 2019 report, Public Works stated it had initiated the preliminary design of a long-term engineered solution at Alla Road which involved construction of a side channel trash removal structure and in that report, Public Works committed to the preparation of the CEQA documentation (the “Alla Road Program”) an important element of the Plan, among many other programs and coordination with the municipalities that make up the Ballona Watershed area.

Petitioners are informed and believe that the Public Works intended for the Alla Road Program to provide the permanent solution to the County’s efforts to clean debris from the Creek. With respect to the removal of micro debris, bacteria, toxins, which were a part of the Plan, Public Works reported that the matter had been handed off to the City of Los Angeles who

had received grant funds with which to plan and to install three low-flow diversion projects to divert urban runoff to the sewer system for treatment and recycling which would remove bacteria, toxins, and smaller pieces of trash, and significantly divert to the Hyperian Water Treatment Facility urban run-off to be treated for recycling and reuse.

Petitioners are informed and believe that this October 1, 2019 memorandum also was only submitted to the Supervisors, individually, and not to the Board as a whole. The public record offers no explanation for what appears to Petitioners to be a procedural irregularity as the chosen method of responding to the Motion. The County and the Board cannot act through its individual members.

No mention of the Interceptor was made in any part of the March 1, 2019 Motion. Nor was it identified in the June 17, 2019, Memorandum from Public Works provided to each of the Supervisors. Most importantly, there is no mention of the Interceptor in the October 1, 2019 Plan.

Notwithstanding, Petitioners contend that this October 1, 2019 memorandum meets and fulfills the Board's second specific instruction from the that Public Works "develop a multi-year, multi-agency plan to reduce trash and debris littering local beaches near the Ballona Creek outlet. . ." As such, and regardless of the form it was delivered to the Board, the October 1, 2019 report and the Plan identified therein, represents the development by the County of a master plan and a program to reduce trash and debris from Ballona Creek. As will be further considered below, this step consisted of sufficient detail and specificity as to constitute a "project" as defined by CEQA, which requires the County's commencement of a process to consider the environmental consequences at the earliest stage possible.

Petitioners are informed and believe that independent of the process set into motion by the Board's adoption of the March 19, 2019 Motion, and outside of the Public Works' planning, coordinating, consulting with other municipal agencies, etc. and outside of the consideration given by the individual members of the Board of Supervisors who each individually received the Public Works June 17, 2019 memorandum and the October 1, 2019 memorandum all of which were silent about the Interceptor, Supervisor Hahn was leading an effort to utilize the Interceptor for the trash removal instead of any of the 5 alternatives identified in the Motion and memorialized in the Plan.

In fact, Supervisor Hahn was actively engaged in advancing the Interceptor as the solution to cleaning Ballona Creek at least as early in 2019 and continuing throughout 2019. Petitioners are informed and believe that sometime in or about February 2019, Supervisor Hahn caused the choosing of a site for the Interceptor east of the Pacific Avenue bridge at the south end of the lagoon between two residential areas. In or about, April 15, 2019, Supervisor Hahn arranged a press conference to announce the County's "commitment" to the Interceptor. This was an inaccurate statement factually and legally because it did not reflect any action taken by the Board, it was inconsistent with the Motion, it had not been publicly reported to Public Works or to the Board, nor had there been an environmental review of this so-called "commitment." The public record offers no explanation for Supervisor Hahn's efforts to advance the Interceptor or her statement of commit to it on behalf of the County in a press conference.

The first evidence of the appearance of the Interceptor on the record occurred at a meeting of the Supervisors on November 5, 2019. At that meeting, the matter of authorizing the Los Angeles County Flood Control District (“District”) to enter a contract with TOC to accept the use of the Interceptor for a two-year long “pilot project (the “Pilot Project.”) Also presented was a proposed Notice of Exemption (“November 5, 2019 NOE”), to proceed with deployment of the Interceptor exempt from additional compliance with CEQA.

The Interceptor is a trash barge sitting on top of a catamaran that is semi-enclosed by a shell designed to conceal a conveyor belt and a series of trash bins that lie within it, what is intended to be tethered to the adjacent jetties on both sides of the Creek, with trash booms directing trash towards the conveyor belt.

A significant missing element of this so-called “action” taken by the Board is the absence of any evidence submitted to the Supervisors about the Interceptor at all, including its efficacy. Nothing in the record establishes that the Interceptor has the potential to remove garbage more effectively than the system Public Works had deployed at the time.

Petitioners are informed and believe that the record contains no explanation for why Supervisor Hahn’s early interest in the Interceptor was not included in any of the Public Works’ reports to the Supervisors reports; or why it was not referenced in the March 19, 2019 Motion, although chronologically it could have been, or why it jumped ahead of the elements and alternatives Public Works had considered and discussed degree of detail in the Plan without any record of prior notice to the public or to Public Works. The public record offers no explanation for why the Board disregarded the Plan and the work that had been completed up to that point in time by Public Works to respond to the Board’s Motion.

Petitioners are informed and believe that the Board voted to authorize the District to enter into a contract with TOC without any supporting evidence in the record regarding the Interceptor, how it worked, its successes and failures in other places it had already been deployed, reasons why it will assist the County to meet the goals set out for Ballona Creek and the Plan or how it was consistent with the Motion, among other missing pertinent and required information. Perhaps it is the absence of any cost to the County that allowed the matter to be authorized but that is not the only consideration County was required to consider. The record contains no information that the Interceptor is a superior alternative to those identified in the in both the June 17th Memorandum and the October 1, 2019 Plan that the Supervisors requested by their March 19, 2019 Motion. Petitioners are informed and believe that notwithstanding the absence of cost for accepting the Interceptor, County has spent considerable sums of money to obtain authorization of it and will continue to spend considerable sums of money to operate and maintain it. The taxpayers are entitled to know these costs, not only in the form of a line item on a budget adopted by the Board, but as an element to allow an informed discussion of County’s commitment to solve a well-recognized problem.

Petitioners contend that for purposes of considering compliance with CEQA, the authorization to contract with TOC represents a small piece of the much more expansive Plan to reduce the unwelcome foreign substances within Ballona Creek that pollute the Ocean, litter the beaches, detract from the Wetlands, and are damaging to the wildlife that live near and in many cases rely on the Creek and Wetlands as their habitat. As a small piece of that multi-agency and multi-year plan that has been carved off of the totality of the Plan that the Board committed to create by its Motion, County's consideration of the Interceptor constitutes an improper "piecemealing" of the whole of the project as defined in CEQA. Also, as discussed more completely below, the deployment of the Interceptor itself is not a self-contained action, but instead it has wide-ranging environmental consequences that must be fully considered to comply with CEQA.

For example, despite unambiguous statements including commitments by Public Works to proceed with implementation steps with target dates regarding the processing of the Alla Road Project, Petitioners have made a futile search for any evidence in the record that these commitments have been fulfilled.

Petitioner is informed and believes that one of the undisclosed outcomes of the adoption of the Interceptor is that it has resulted in tabling the Alla Road Project as a permanent solution to the challenge of cleaning Ballona Creek. Public Works has publicly admitted that if the Interceptor project is successful (without providing the Board or the public how it intends to measure success) then permanent implementation of the Interceptor will replace the Alla Road Project.

Petitioners are informed and believe this means that the earliest the Alla Road Project will begin to move forward again will be in April 2024 at the end of the storm season and thereafter it will require an additional 2-3 years for design and environmental analysis. This means that the Alla Road Project will have been delayed between October 2019 and 2027. This delay is a part of the scope of the Interceptor that requires full consideration of foreseeable environmental impacts.

Petitioners are informed and believe that the record contains no explanation or environmental analysis despite the many facts raised herein of what appears to be a wholesale abandonment of the Plan and of the directives commenced by the Motion.

III. NONCOMPLIANCE WITH CEQA

A. CEQA PROCESS

Petitioners contend that for the many reasons alleged herein, the County failed to comply with the notice requirements set forth in CEQA regarding its intentions to deploy the Interceptor including the approval of the November 5, 2019 NOE (the "NOE.")

In addition, Petitioners contend that for the many reasons alleged herein, the County failed to comply with the substantive requirements of CEQA, including those that specially apply to proceeding by a notice of exemption under CEQA.

The NOE was not sufficiently specific about the location proposed for the Interceptor. The figure attached to the NOE posted by the County Clerk depicted an overly vague and large area proposed for deployment and the location of the Interceptor has been an issue of considerable concern to Petitioners and has moved at least twice in the process and Petitioners are informed and believe there is an intention to move it a third time. Consequently, Petitioners contend the NOE failed to provide adequate notice of the Project .

The NOE prepared by Public Works contained several pages of discussion that were not posted by the County Clerk. By this omission, Petitioners contend they were deprived of adequate notice of the Project.

The NOE submitted to the County Clerk was superseded by a document dated March 8, 2021 (the “Second NOE.”) The Second NOE constitutes an admission of a material flaw in the substantive analysis stated in the November 5, 2019 NOE. In or about August 2020, Public Works engaged a consultant to investigate the potential impacts on biota and report back with: 1) a Biological Resources Technical Report; 2) Essential Fish Habitat Assessment; 3) Marine Biological Technical Study; and 4) a “cultural resources investigation.” Petitioners are informed and believe that these studies were demanded by agencies whose approval were required prior to proceed with the Interceptor which constitutes evidence that the failure by Public Works to have done them in advance of the NOE was a deficiency regarding the requirements under CEQA to fully evaluate these issues. Furthermore, the Second NOE characterized its November 5, 2019 NOE as based on a “Preliminary Environmental Evaluation.”

The Second NOE is described as “an environmental evaluation of the (Interceptor project)” based on “new information about the (Interceptor project) has become available” Petitioners are informed and believe that t Second NOE has never been provided to the County Clerk or to OPR for posting. By this omission, Petitioners contend they were deprived of adequate notice of the Project.

Petitioners are informed and believe that County made no affirmative effort to reach out to the residents in the area before the Petitioners discovered what the County was intending regarding the Interceptor in May, 2021. Petitioners’ first alert that something was underway related to the Interceptor on or about May 3, 2021, when a person who resided within 120 yards of the proposed location, , for the Interceptor noticed a formal meeting of approximately 8 or more professionally dressed individuals. That observation prompted this resident to inquire about the subject matter of that meeting.

On or about May 5, 2021, a civil engineer from Public Works contacted a Petitioner and explained the substance of the Interceptor concept. This was the first occasion in which Petitioners obtained actual notice related to the Interceptor.

On May 11, 2021, a remote meeting occurred between Public Works and Petitioners at which Petitioners expressed great concern about the location of the Interceptor and complained about the lack of notice to the public and the lack of being given any opportunity to participate in

review of the matter. Public Works promised to re-visit the proposed location, engage and involve the Petitioners in its future pursuits, and provide timely information to allow public participation in the considerations regarding the Interceptor project.

Despite these promises and the County's undeniable knowledge that the Petitioners had concerns about the Interceptor project, 2 days later the matter was submitted to the California Coastal Commission without any word of that event.

Petitioners are informed and believe that Public Works deliberately withheld from Petitioners any information about that hearing in a deliberate effort to suppress Petitioners' expression of their grievances beyond the informal conversations that had begun with Public Works. The Coastal Commission approved the item on that date.

On June 9, 2021, a virtual meeting occurred with Petitioners also attended by Supervisor Hahn, the Director of Public Works, Deputy Director Water Resources, Dan Lafferty. In response to Petitioners' expressions of the many grievances including specific objections to the Interceptor project, Supervisor Hahn accepted and admitted fault for County's failure to provide adequate public notice and for failures to provide for any meaningful opportunity to comment on the Interceptor project including the environmental concerns that had just been raised at that meeting.

In front of the Petitioners, Supervisor Hahn then directed Public Works to find a solution to relocate this project East of residential areas or not proceed with it at all. The Director of Public Works promised Supervisor Hahn and the participants of the virtual meeting that his department would go back and review the engineering of project. Based on this instruction from the Supervisor and the promise from the Director of Public Works, Petitioners understood and believed the Interceptor project would be fully reconsidered by Public Works based on input from the Petitioners.

Petitioners reasonably relied on these representations to mean there would be a complete re-consideration of the merits of the interceptor project, that a new process would ensure to allow full public participation in considering the merits, environmental impacts and alternatives to the goal Petitioners agreed with of reducing garbage inundation of the nearby beaches.

Petitioners' reasonable reliance on the County's statements it was going to reconsider the Interceptor was reinforced by a telephone call on or about October 25, 2021, with the Public Works Deputy Director, who is the chief of its Water Resources Division, Dan Lafferty. Petitioners were informed and believed at the time of this call that Mr. Lafferty was chief of the Storm Water Division of Public Works and therefore based on these positions and responsibilities Mr. Lafferty spoke with authority on behalf of the County regarding the Interceptor project. During that call, Mr. Lafferty told the neighbors that: 1) he planned to stop the Interceptor project; and 2) cancel the agreement with TOC. Mr. Lafferty stated that the Interceptor project no longer makes sense because of the intervening changes by Public Works consisting of the addition of two additional trash booms, better nets, and the employment of superior technology that allowed for greater buoyancy during tidal surge. Mr. Lafferty stated that

these steps had eliminated the need for the Interceptor project. Mr. Lafferty also explained that the permanent solution was the construction of a side channel trash removal structure at the junction of the Ballona and Centinela Creeks known as the Alla Road Program.

Petitioners' reasonable reliance was further reinforced on or about December 10, 2021, Carolina Hernandez, Assistant Director of Public Works, Chief Planer for Flood Control, participated in a phone call with Petitioners to discuss the undecided possible locations of the Interceptor. During that call, Petitioners were told the County has no financial liability associated with terminating the agreement with TOC and that County could easily back out of it. The communicated further the possibility that as part of reconsidering the Interceptor, the project may be cancelled altogether. Ms. Hernandez also took responsibility for not communicating with Petitioners from the beginning and promised to remedy this failure in the future.

Petitioners reasonably relied on all of these representations by persons with ostensible authority to commit the County to a course of action, and in reliance thereon, Petitioners ceased the work by an environmental attorney, whom they had retained to pursue legal redress based on their many grievances about the substantive and procedural failures of County's consideration of the Interceptor project including under CEQA.

Much to Petitioners' shock and dismay on or about January 17, 2022, Public Works formally announced, on their website that the Interceptor project was going to proceed, a project schedule was posted, including the scheduled construction intended to commence in April, 2022, with intended deployment of the Interceptor in October for the Pilot Project to run between October 2022 to April 2024.

As a result of Petitioners' reasonable reliance on County's many representations that there would be a reexamination of the Interceptor project including the consideration of input by the neighbors including the Petitioners, the passage of time between the date of June 9, 2021, and January 17, 2022, during which Petitioners did not act to oppose the Interceptor project, that period is tolled based on principals of basic fairness and the doctrine of equitable estoppel with respect to the contention the County might use as a defense against this action based on alleged untimeliness.

B. SUBSTANTIVE NON-COMPLIANCE WITH CEQA

1. "PROJECT" DESCRIPTION

In CEQA, the project description is the *sine qua non*, without which – there is nothing – of environmental analysis. It is indispensable. County has not been consistent about the full scope of the Interceptor as a project as defined in CEQA.

The Interceptor is not an isolated "project" as defined in CEQA. It is a piece of the County's multi- agency and multi-year efforts County in coordination with the municipalities that comprise the watershed area of the Ballona Creek to address the problem of trash and debris

collection prevention and removal methods from the Ballona Creek and including a coordinated effort to obtain grant “opportunities for future in-channel solutions.”

Petitioner is informed and believes there will be no significant difference between the Interceptor project as a pilot and as a permanent project. If the Interceptor project become the permanent solution to address the issues Public Works was tasked to undertake as identified in the Plan, County has admitted that will prepare a full environmental impact report. This constitutes an admission that the County believes that implementation of the Interceptor project now has the potential to adversely impact the environment which will necessitate consideration of mitigation measures and alternatives to avoid the identified impacts. Thus, County’s representation that the project is only a “pilot” is inaccurate, misleading, understates its full scope and minimizes the environmental considerations, based on alleged temporal considerations as opposed to physical changes to the environment. CEQA does not excuse compliance based on the duration of the impacts. This artificial distinction lacking support in the law also fails to take into account a foundational requirement of CEQA to analyze to the extent feasible all of the identifiable and reasonably foreseeable impacts at the earliest opportunity.

The scope of the Interceptor project is also significantly wider than has been admitted by the County. Public Works has admitted to the public that if the Interceptor is successful, then the Interceptor will replace the Alla Road Program. This also constitutes an admission that the Interceptor is not an isolated matter but rather it is a piece of the whole of the greater project as defined by CEQA – essentially admitting to improperly piecemealing under CEQA. More importantly to the events of the moment, the cessation of the processing of the environmental and other design and planning documents for the Alla Road Program since at least November 2019, illustrates the wider scope of the impacts of proceeding with the Interceptor that were never considered under CEQA.

Whether or not County has piecemealed the project review of the Interceptor, CEQA requires review at the earliest opportunity that a meaningful environmental analysis can occur. The whole of the project – the Plan has never been environmentally considered. Given the direction to develop a multi-year and multi-agency Plan, County erred not authoring the development of the appropriate environmental analysis of the “whole of the action.” This failure could have easily been avoided. CEQA has a very carefully developed set of procedures designed to reduce costs and redundancy while at the same time fully considering environmental impacts based on the allowance of “tiering” as defined in CEQA. Had County certified a full master or program EIR for the Plan, conceivably the approval of the Interceptor could have been by a NOE tiering off of the master EIR. But, since no aspect of the Plan has been environmentally considered, that possibility has not occurred.

The NOE does not perform the role of environmental analysis of all aspects, direct and indirect impacts of the Interceptor. For an example, driving the garbage downstream from the location it is currently being collected, which is upstream of the Wetlands, and allowing the garbage to float passed the Wetlands, constitutes a physical change to the environment. That component of the Interceptor has not been considered in either of the NOEs.

The restoration of the Wetlands has been formally established. In the future, the Creek will meander through the Wetlands. The likelihood is that tidal action will do to the Wetlands what tides currently do within the Ballona Creek channel, i.e., leave a “dirty bathtub ring” of garbage. The marsh grasses of the Wetlands will trap garbage as or more effectively as can be observed in the channel now. Tidal action varies and there are times that a very high tide is not equaled or surpassed for long periods of time – up to months that would be necessary to retrieve the garbage back to pull it back into the Creek. Also, perversely higher succeeding tides could drive the garbage deeper into the Wetlands. None of this is a possibility when as now the garbage is retrieved upstream of the Wetlands. CEQA requires that the project definition include the relative change regarding the physical change to the environment, including the relocation of the removal of the garbage until after it had passed by the Wetlands.

Another environmental issue that is fundamental to the method required for the Interceptor to perform its intended mission is the assumption that fresh water that travels down the Ballona Creek is necessary to drive the garbage out toward the Ocean before, at the very end of the journey, it gets picked up by the interceptor. Citizens of Los Angeles County are not allowed to hose down their driveways because of water scarcity. Yet the Interceptor cannot work without untold gallons of water that must flow down to the Interceptor and then promptly out to the Ocean, wasted. This implicit fact is built into the operation of the Interceptor. The waste of recyclable and reusable stormwater and urban runoff was not been considered in either of the NOEs. The scope of the project includes the admission of the amount of fresh water necessary to allow the Interceptor to perform its intended function.

A complete environmental analysis requires identification and consideration of any “conflicts” between the proposed matter and plans, policies, and regulations adopted to avoid or mitigate environmental impacts. As with the previous paragraph, the Interceptor wastes a vast amount of fresh water that could be captured, cleaned and re-purposed. The reliance on wasting fresh water by the Interceptor directly conflicts with the direction of an overwhelming majority of voters who approved Los Angeles County Measure W, which has been championed by the County and the other municipalities that share the Ballona Creek watershed. This is just one more example of the types of big environmental issues that are overlooked when the approving agency fails to examine the “whole of the project” including conflicts with environmental plans, policies and regulations.

To test the efficacy of the Interceptor, the current floating boom system will have to be opened, otherwise there will be less, little or perhaps no garbage flowing down the Ballona Creek to the Interceptor. The record amply demonstrates that in all but storm events, the Creek has no discernable garbage and even after a storm event, there is little if any appreciable amount of garbage that escapes the current 3-boom system. Thus the Project description must include the removal of the current floating boom system. With the booms deployed in the place they are currently, there is no reason for the Interceptor. The removal of the booms will constitute a profound change in the environment as discussed below.

County has not been forthcoming about this material change in the environmental circumstances of the “Pilot Project” by failing to disclose them. The failure to disclose this

material fact distorts the environmental analysis in many ways – but most significantly it conceals the most fundamental question of interest to the public - is there currently a problem and if so is the proposed method of deployment of the Interceptor the best solution, whether environmentally or fiscally?

2. SUBSTANTIVE DEFECTS IN THE NOTICES OF EXEMPTION

The posted NOE did not have any supporting attachments as part of the document sent to the County Clerk for posting, with the exception of an illustration of a proposed location. The “backup” was contained in an Inter-Office Correspondence between two different offices of the Stormwater Quality Division. Petitioners never saw these materials until well over one year later. The County performed a subsequent “Environmental Evaluation” reflected in an internal letter between staff members of County’s Stormwater Division dated March 8, 2021 that supersedes County’s November 5, 2019 NOE (“Second NOE”) The Second NOE states it is based on changes to the project, and on studies of subjects that occurred after the posting of the November 5, 2019 NOE.

These studies looked at Biological Resources and Cultural Resources which in the November 5, 2019 NOE were determined not to involve any potential significant impacts. However, there was no study done to support those findings. Not until 17 months later were these studies conducted. CEQA does not allow conclusions without supporting substantial evidence. The after-the-fact consideration of these two subjects constitutes an admission that the November 5, 2019 NOE lacked substantial evidence to support its conclusions regarding Biological Resources and Cultural Resources.

Furthermore, the Second NOE states: “the Pilot Project’ is not located within a Significant Ecological Area as it was moved downstream of the Ballona Wetlands (Los Angeles County 2020),” From this statement it reasonably can be inferred that the previous location of the “Pilot Project” was formerly located within or at least near a Significant Ecological Area until it was moved. But an examination of the Los Angeles County Department of Regional Planning GIS – NET website (http://rpgis.isd.lacounty.gov/Html5Viewer/index.html?viewer=GISNET_Public.GIS-NET_Public and also https://planning.lacounty.gov/assets/upl/project/gp_2035_2014-FIG_9-3_significant_ecological_areas.pdf shows that both sides of the Ballona Creek east of Lincoln all the way to the Esplanade, a couple of blocks from the Ocean is designated as SEA by the County.

In fact, the biological importance of the Ballona Wetlands goes beyond the system County uses to designate precious Biological Resources. The Wetlands have received special legislative status by the State of California as follows:

“Ballona Wetlands consisting of 553 acres in Los Angeles County is proposed for designation as an ecological reserve for the protection and enhancement of coastal salt marsh and freshwater marsh habitats, and associated species, including the state listed endangered Belding’s savannah sparrow. The area is also an important wildlife movement corridor to other public lands in the vicinity of the wetlands.

The reasons for listing this property in Title 14 are to regulate public use and provide the best available protection for the species and habitats the property was acquired to protect.”
Section 630, Title 14, California Code of Regulations, relating to Ballona Wetlands Ecological Reserve, 2005.

The failure to measure the potential significant impact against this special status created by the State Legislature, and reliance only on the County’s designations of areas of ecological significance, reveals the limits of County’s consideration of the potential Biological Resources impacts.

The Second NOE states without supporting evidence that aside from the Biological and Cultural Resources, none of the remainder of the listed Appendix G criteria were affected by the changes and the new information. The Second NOE summarily concludes without consideration, analysis or support that none of the other items listed require further consideration. However, the change of location constitutes a substantial change in the project, as shown by the issues addressed below, which will require a reconsideration of the County’s environmental analysis and conclusions including proceeding by reliance on a NOE.

The Second NOE states it was made necessary based on substantial changes proposed in the project – significantly its location. This includes moving it considerably further downstream towards the breakwater that protects the Creek and the channel access to the Marina del Rey. The haul out for seals and sea lions is not far downstream from the proposed location of the Interceptor. Petitioners often view seals swimming up the Ballona Creek well upstream of the Pacific Avenue Bridge and therefore through the location proposed for the Interceptor. Petitioners also see large flocks of pelicans diving for fish in the portion of the Creek adjacent to the proposed location of the Interceptor

These observations strongly support the inference there are fish and not only tiny fish, in that part of the Creek. What happens to those fish if retrieval of the garbage is moved downstream from where it currently is retrieved, which is not a deep portion of the Creek, is not infiltrated by as much or even any tidal water, and therefore is an entirely different biome? The evidence does not support the conclusion that the move downstream does not significantly impact these observed aspects of the impact on Biological Resources.

There is no mention in the Second NOE of the use of the Creek by seals despite the move of the Interceptor right into the middle of this use of the Creek and significantly closer to the haul out. This move constituted a major change with great potential adverse environmental impacts that seemingly were not even considered.

It appears that the Second NOE admits that at its former location, the proximity to the Wetlands could cause an adverse impact on Biological Resources. This comports with common sense, informed by the function a wetland or tidal marsh plays in the food chain and the preservation of rare and endangered species, which is the reason so much resource is being applied to the preservation of these scarce resources.

It is important to note that the garbage, especially during the days without a storm event, will ebb and flow with the tidal currents. This means it will flow upstream for the same amount of time as downstream. The unaddressed issue is the extent to which the garbage, that currently is being caught upstream of the Wetlands, will inundate the Wetlands because the new program requires that it float passed the Wetland before it is captured and removed. The implied admission in the Second NOE of potential adverse impact on the Wetlands has not been adequately considered in the document relying on the new location of the Interceptor downstream.

Another new consideration arising out of the relocation of the Interceptor downstream of the Pacific Avenue Bridge is that it will place the Interceptor, the booms and the garbage directly in the line of view from the Pacific Street Bridge towards the Ocean, thus directly into and spoiling a primary scenic view. Petitioner Kailes, who lives at this location, observes that on weekends and holidays, the area provides a wide-ranging recreational resources including biking, running, rowing, fishing, and viewing the water. These facts, stated by Petitioner to establish the adverse impact on Aesthetics and Recreation are based on personal observations concerning nontechnical matters like these which constitutes substantial evidence under CEQA. For reasons not disclosed in the Second NOE, these impacts were discounted to zero. The evidence does not support this conclusion.

One important and unanswered question involving the Appendix G consideration of Water Quality arises of the amount of time the garbage remains in the water. During non-storm events, the tides will bring the garbage back and forth in a portion of the Ballona Creek where water quality is important to seals, and fish both now and in the foreseeable future when the Wetlands has been restored. Upstream, there is little or no water so the garbage can lie on as dry concrete channel floor or along its sides for months without any impact on the environment. Whereas garbage not collected and hauled out of the Ballona Creek upstream which will occur in a far more sensitive part of the Creek will reside in the water for perhaps a very much longer period, decreasing the water quality. The change in location exacerbates this problem not considered in either of the NOEs.

This also raises the question of how long the garbage will sit in the bins during the dry season when urban runoff and tides will not bring any appreciable amount of garbage downstream. This will invariably enlarge the time necessary to fill the bins in the Interceptor.

The Second NOE was required to identify and consider materially changed circumstances surrounding pertaining to the undertaking of the project. The Second NOE failed to acknowledge or consider perhaps a most important and materially changed circumstances - the final environmental impact report to restore the Ballona Wetlands Ecological Reserve by the California Department of Fish and Wildlife. The restoration project aims to restore the ecological function of 566 acres of the reserve, which lies between the Santa Monica Bay community of Playa del Rey and sprawling Marina del Rey and is divided by the Ballona Creek. CEQA requires compliance based on the current environmental circumstances, not one that has been obviated by material changes in the land use designations. This certification of a plan and policies adopted to protect the environment gives rise to new land use considerations and

whether the Interceptor conflicts with the final designation of the Ballona Wetlands Ecological Reserve. The Second NOE relies on the faulty original NOE and overlooks this material change in the circumstances.

Water Resources is another Appendix G factor that was not properly considered in the original NOE nor rectified in the Second NOE given the material change in circumstances between the first and the second. The issue Water Resources in the present requires consideration of the impact on the mandate to recapture and recycle and reuse storm water to address the long-term expectancy of drought conditions. In November, 2018, voters of Los Angeles County voted overwhelmingly to adopt Measure W. On or about 2019 County enacted Chapters 16 and 18 of the Los Angeles County Code to begin to implement the mandates arising from that measure. As alleged above, to use precious water to drive the garbage downstream before it is picked up at the end of the Ballona Creek, the Interceptor relies on untold quantities of wasted (not reclaimed, recycled and therefore not useable) fresh water that will wash into the Ocean without any other purpose. The County's legislative actions to implement Measure W constitutes a material change in the circumstances regarding Water Quality, that was not considered in the original NOE or the Second NOE.

Another materially changed circumstance since the original NOE was prepared was the installation of one of the alternatives suggested in the October 1, 2019 Plan, i.e., the implementation of improved technology used to float the trash intercepting boom, and add significantly, the addition of two new booms. Petitioners, who live adjacent to the location of the Interceptor almost never see garbage floating in the Ballona Creek below the Pacific Avenue bridge, including after most storms. Petitioners are informed and believe that by this deployment County made vast improvements to the restraint of the garbage such that little of the garbage the size and type that the Interceptor is capable of recovering escapes to go downstream towards the Ocean. The record contains no evidence about the efficacy of this intervening 3-boom solution that the Interceptor is intended to address that was implemented subsequent to the vote of the Board to authorize Public Works to partner with TOC and the adoption of the November 5, 2019 NOE. In other words, there is a new baseline and there is not information about it.

CEQA is a legislative policy requiring transparency and full disclosure of all of the environmental issues that arise directly and indirectly, primary and foreseeable secondary and reasonably foreseeable future impact of any proposed changes in the environment. This Petition raises many examples of County's deliberate concealment from Petitioners of material facts that CEQA requires the County to disclose. Petitioners are informed and believe that County incorrectly determined that it had a "free-pass" to proceed with the Interceptor because the Supervisors had adopted a NOE at the earliest stages of development of the project regardless of intervening changes to the project and to the relevant circumstances surrounding the project. Based upon an extensive review of the documents that will comprise the record, Petitioners can now prove this concealment and County's bad faith in regards to public engagement as issues, problems, and changes were made regarding the Plan and the Interceptor project in particular.

3. THE PROJECT DOES NOT QUALIFY FOR A CEQA EXEMPTION

The Second NOE is defective because the 2-year “Pilot Project,” intended to operate 365-days a year, even during the dry season during low flow, so-called urban run-off, is not a feasibility study under CEQA. Gathering data is the secondary function of the “Pilot Project.” The first is gathering and disposing of garbage. CEQA does not allow the ancillary function to dictate an exemption.

Moreover, the Interceptor will be fully operational throughout the 2-year “Pilot Project” in the same way manner as it will be if it were to become permanent. This reveals the permanence of the project as opposed to its secondary function - data collection. Since the County admits that before becoming permanently operational, a full environmental analysis will be conducted, then the principal of requiring a full environmental analysis at that time constitutes an admission that one is required at the present – before it becomes operational.

CEQA Guidelines Section 15262 - Feasibility and Planning Studies – relied on by Respondents to proceed with this so-called “Pilot Project” is inapplicable because the Project that was authorized contemplates a present action – deployment of the Interceptor, operation and maintenance. The possibility of additional action in the future will be the same or at least functionally the same.

The record demonstrates that the Project involves several complex, interrelated changes to the physical environment with environmental consequences, not simply the placement, operation and maintenance of the Interceptor as incorrectly stated in the NOE. The whole of these several direct and indirect changes to the environment ranges far beyond a “feasibility and planning” study. The mischaracterization that the Project involves merely data collection to justify a Feasibility and Planning Studies exemption Planning Study is not supported by the facts. Therefore, the Project does not qualify for an exemption under this section of CEQA.

Moreover, a project seeking an exemption based on “feasibility or planning studies” for possible future actions must be one that the agency, board, or commission has **not** approved, adopted, or funded. The Board authorized Public Works to enter into the contract with TOC by a formal motion that was adopted by the Board. This constitutes a second grounds on which the Project fails to qualify for an exemption under this section of CEQA.

All of the same allegations that deny the Project is exempt under CEQA Guidelines Section 15262, apply equally to CEQA Guidelines Section 15306, Information Collection, Class 6 and therefore are incorporated here as though fully set forth. CEQA Guidelines Section 15306 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. Because this exemption may be used strictly for information gathering purposes, or as part of a study leading to an action which a public agency has **not** yet approved, adopted, or funded, this Project does not qualify for an exemption under this section of CEQA.

The Second NOE incorrectly determined that there are no exceptions to the CEQA exemptions described above. However, CEQA Guidelines Section 15300.2 provides that under certain environmental circumstances, the exemptions will not apply.

CEQA Guidelines Section 15300.2(d) prohibits use of an exemption where a project may result in damage to scenic resources. The historic Pacific Avenue Bridge includes a bicycle path that is used by thousands of people on each of most days of the weekends and holidays. In addition, there are viewing platforms for enjoying the ocean, the water, and the seal and sea lion haul outs, a short distance away. It is not uncommon to view a seal swimming up the Ballona Creek near the Pacific Street Bridge, beyond the place where garbage will rest waiting to be picked up by the Interceptor. The relocation of the Interceptor downstream of the Pacific Street Bridge will place the Interceptor, the booms and the garbage directly in the line of view from the Pacific Street Bridge towards the Ocean, thus into the primary view. Establishing these facts to establish the adverse impact on with a scenic resource based on personal observations concerning nontechnical matters like these constitutes substantial evidence under CEQA.

The relocation of the Interceptor west of the historic Pacific Avenue Bridge constitutes a material change regarding the potential impact on scenic resources which is not acknowledged in the Second NOE. The conclusions that there is no impact on this environmental concern is not supported by substantial evidence.

Petitioners are informed and believe that the Second NOE was not sent to the County Clerk for posting. Under CEQA, the statute of limitations is 180 days from the date Petitioners actually became aware of the project, or reasonably should have become aware of it, plus the time that this action was tolled as alleged above.

County cannot proceed with any further approvals or deployment of the Interceptor without first conducting an Initial Study under CEQA to determine whether to proceed with a negative declaration of an environmental impact report required to meet the requirements of CEQA.

Petitioners are informed and believe that currently County is working on a third NOE. That document is currently unavailable for comment. But petitioners cannot be late in challenging the defective CEQA analysis that has not yet been completed.

I appreciate the opportunity to address this matter.

Respectfully submitted,

Corin L. Kahn

cc. clients

County Counsel

Lauren Dods: ldods@counsel.lacounty.gov

Laura Jacobson: ljacobson@counsel.lacounty.gov

Mark Yanai: myanai@counsel.lacounty.gov

Public Works

Cung Nguyen CUNGUYEN@dpw.lacounty.gov

CORIN L. KAHN

ATTORNEY AT LAW

401 WILSHIRE BOULEVARD, 12th Floor
SANTA MONICA, CALIFORNIA, 90401

TELEPHONE: (424) 252-4714

WRITER'S E-MAIL:
CLKESQ@OUTLOOK..COM

OUR FILE NUMBER:

March 22, 2022

VIA eMail Only

executiveoffice@bos.lacounty.gov

Los Angeles County Board of Supervisors
Hall of Administration
500 West Temple Street, Room 383
Los Angeles, CA 90012

Re: Ballona Creek: Interceptor Project as Partial Implementation of the March 19, 2019 Motion by the Board of Supervisors regarding Ballona Creek

Dear Honorable Members of the Board of Supervisors:

This firm represents the homeowners of the surrounding residential neighborhood and includes a wider group of residents and homeowners of the Playa del Rey area of the County, recreational users of the ("Petitioners.") who are very concerned about the many failures to fully consider the consequences of the planned deployment of a project known as the Interceptor (referred to herein as the "Interceptor" or the "Project.") This letter seeks to persuade the County Board of Supervisors (the "County" or "Respondents" depending on the context) not to move forward with deployment of this Project, and to advise the County that Petitioners are ready to file this letter with the Superior Court in the form of a petition seeking an order to stop that deployment and to take all steps necessary to bring into compliance with the California environmental Quality Act (*Public Resources Code* Sections 21000 *et seq.*, and 14 *Cal. Code of Regs.* Sections 15000 *et seq.* hereinafter "CEQA"), the Project as a part of the totality of the program the County set created by adopting its March 19, 2019 Motion directing the Department of Public Works to develop a comprehensive plan to address the cleaning of the Ballona Creek ("Creek") watershed area including the Creek itself.

If Petitioners deem it necessary, they will seek judicial relief on the grounds that the decisions by Respondents on or about November 5, 2019, to authorize Public Works to enter into a contract with TOC in which the County agreed to accept, free of charge, the Interceptor to be operated and maintained by the County for the purpose of gathering and removing certain forms of garbage from the Ballona Creek for disposal into a landfill, and the accompanying adoption of a Notice of Exemption ("NOE") which is a determination that these activities and a myriad other

events, actions, and changes in the circumstance that occurred during the intervening nearly 30 months are exempt from the procedural and substantive requirements of CEQA.

Petitioners allege that these two actions, and subsequent processing of the matters related to these actions taken by the Board constitute a prejudicial abuse of discretion inasmuch as Respondents have not proceeded in the manner required by law, the decision is not supported by findings, and the findings are not supported by the evidence in the record including in particular failure to comply with CEQA.

II. STATEMENT OF FACTS

A. PHYSICAL ENVIRONMENTAL SETTING

The Ballona Creek is a channelized waterway that drains the watershed of approximately 130 square mile watershed, including parts of the cities of Los Angeles, Beverly Hills, Culver City, Santa Monica, West Hollywood, Inglewood, Westchester, and unincorporated areas within the County.

The channelization of the Creek occurred in or about the 1930s as part of a massive effort to control flood waters during the episodic rain events that occur in Southern California that at times could otherwise be devastating to adjacent neighborhoods. The channelization attempted to follow as much as possible the natural watercourse of the Creek to the Pacific Ocean (“Ocean”) where the Creek empties some 9 miles from the origin of the channel. located within the City of Los Angeles at or about Cochran Ave. near Venice Boulevard.

The water enters the Creek through a series of storm drains located throughout the watershed. Therefore, in addition to extraordinary volumes of rainwater during episodic rain events, the Creek has water during what is referred to as the dry-weather periods that occur it at all times from urban run off.

A bicycle path runs the entire length of the Creek from the beginning of the channel to the ocean. The bike path is an extremely popular recreational resource used by thousands of hikers and bikers per day on a typical weekend or holiday. At approximately 3 miles upstream from the ocean, the Centinela Creek contributes water to the Creek. At approximately 4 miles upstream from the ocean, the Sepulveda Channel contributes water to the Creek.

The last approximately 1.75 miles of the Creek involve several critical environmental resources. Beginning just downstream of Lincoln Boulevard are an ancient tidal wetlands called the Ballona Wetlands (“Wetlands.”) As its name implies the Creek feeds freshwater and tidal water into the Wetlands throughout the year. The Wetlands are approximately 500 acres and 1.75 miles long measured from where the Creek enters the Wetlands to where it has passed the Wetlands, which is approximately 1.75 miles from the ocean. The Wetlands are also provided with ocean water based on tidal water flow. Therefore, as is the case with wetlands throughout Southern California, the water involved in the Wetlands is described as brackish, meaning slightly salty, as is the mixture of river water and seawater in estuaries.

Wetlands in general and the Ballona Wetlands in particular are well recognized as a scarce and precious environmental resource for a wide range of environmental considerations. In or about 2017, a huge commitment was made by several government agencies including the County to the restoration of the Wetlands as proposed by California Department of Fish and Wildlife and the United States Army Corps of Engineers (“Corps.”) That project is scheduled to get underway, perhaps as soon as this year.

The last approximately 1.75 miles of the Creek are separated from the Marina del Rey harbor channel (“Marina Channel”) by a rock jetty that was built in or about the 1960s and is maintained by the Corps at this location, the Creek ranges in depth depending on the tide. It is in this location that college crew teams practice their rowing. UCLA maintains an athletic center within the Marina Channel just downstream of the Creek of the Wetlands.

The several miles long jetties on both sides of the Creek, maintained by the County by its Division of Beaches and Harbors, provide recreational opportunities well used access to persons fishing, walking, and viewing the boats entering and exiting the Marina Channel. Beyond both the Marina Channel and the Creek is a long rock breakwater that protects by deflecting ocean storm tides away from both of these discrete bodies of water. That breakwater is a well-used and widely recognized sea mammal “haul out.” “Hauling-out” typically occurs between periods of foraging activity. Rather than remain in the water, pinnipeds haul-out onto land for reasons such as reproduction and rest.

B. OTHER MATERIAL FACTS INVOLVING THE ENVIRONMENTAL SETTING

All of California, but more particularly and severely, Southern California is experiencing a long cycle of drought conditions. It has been generally accepted among climate scientists, that this cycle is long-term. And because current efforts to address this issue seem to be in its infancy, and there is little evidence of significant changes in the behavior of most people, this phenomenon is anticipated to last into the foreseeable future and will likely be exacerbated by also well recognized and accepted among climate scientists as the general warming of the earth generally referred to in policy making and legislation as “climate change.”

The State Legislature has been taking steps to prepare the State for the long-term effects of Climate Change since at least 2006 by Executive Orders and by the Legislature’s regular enactment of various land use and transportation schemes since then.

On November 6, 2018, voters enacted Los Angeles County Measure W (“Measure W”) by an overwhelming majority consisting of very nearly 70% of those who voted. Measure W was described on the ballot as an ordinance for the purpose of: “improving/protecting water quality; capturing rain/stormwater to increase safe drinking water supplies and prepare for future drought; protecting public health and marine life by reducing pollution, trash, toxins/plastics entering Los Angeles County waterways/bays/beaches; . . . raising approximately \$300,000,000 annually until ended by voters. . . .”

There are two aspects of Measure W that are of particular concern in this petition: 1) “reducing pollution, trash, toxins/plastics entering Los Angeles County waterways/bays/beaches” and 2) “capturing rain/stormwater to increase safe drinking water supplies and prepare for future drought.”

Los Angeles County has been and remains actively involved in many programs to limit the amount of pollutants that could enter the Creek. Despite significant combined effort by the municipalities that comprise the watershed area and the County to prevent pollutants from entering the Creek, the County has been developing and enhancing the means to capture significant amounts of garbage, one prevalent and particularly visible form of pollutants, that at times inundates the Creek. For the past 4 years, the County self-reports that it has removed 37, 27, 10 and 26 tons of garbage from the Creek for each of those years, respectively. Petitioners are informed and believe that to date, little or perhaps nothing at all has been or is currently being done to prevent two very significant pollutants known to enter the waters of the Creek and into the Ocean: 1) microplastics, roughly defined as “small plastic pieces less than five millimeters long which can be harmful to ocean and aquatic life; and 2) toxins. The County self-reports that among the many toxins that flow to the Ocean by means of the Creek.

The method the County presently employs is three trash inhibiting booms stretched across the Creek that intercept all or virtually all of the floating trash and at least some of the trash that is not floating on the surface of the water is also captured before it flows down the entire length of the Creek, into the Ocean, and then washing up onto the shore line throughout the Santa Monica Bay, or floating out to sea. Then, from time to time, employees of the Department’s Stormwater Division, physically extract the garbage caught behind the boom and haul it to a land fill.

Petitioners are informed and believe that the County has not employed all economically feasible methods of removal of the garbage from the booms, including frequency, such that infrequently, limited amounts of garbage escape this system of floating booms which then flows down the Creek into the Ocean. The likelihood of this occurring is greatly increase by a major storm event. Nevertheless, the current system deployed by the County to intercept and remove the garbage as one part of a comprehensive program to do so, objectively has been a substantial success, measured in part by annual improvements of the measures OF water quality within the Bay and at nearby beaches.

C. BASELINE

The County also has not been forthcoming regarding the baseline. Based on the Plan submitted to each Supervisor dated October 1, 2019, Public Works promised to improve the technology used to float the trash intercepting boom and add two additional booms to gain better control over the garbage, especially during high water surge events. This was in fact implemented in or about 2020. The record contains no evidence about the efficacy regarding this intervening solution that the Interceptor is intended to address that was implemented subsequent to the vote of the Board to authorize Public Works to partner with TOC. In other words, there is a new baseline and there is not information about it. The significance of that there is no evidence

in the record that the Interceptor will be deployed to solve any problem. There simply might not be one. If so, then the Interceptor is a solution in search of a problem.

D. PROJECT DEVELOPMENT AND PROJECT REVIEW

To further enhance the efficacy of this system in or about March 19, 2019, the County, by its Board of Supervisors approved a motion directing Public Works to report back on trash reduction efforts associated with Ballona Creek (the “Motion.”)

Based on the language of the motion, its purpose was to advance on-going efforts by County in coordination with the municipalities that comprise the watershed area of the Ballona Creek to identify alternative “trash and debris collection and removal methods” and including a coordinated effort to obtain grant “opportunities for future in-channel solutions” The motion identified 5 specific alternatives the County requested be evaluated. Petitioners contend the County’s adoption of this Motion set into motion the development of a comprehensive plan

In response to the directive set forth in the Motion, on June 17, 2019, Public Works submitted a summary of steps currently being taken by watershed cities to control trash at the source and a report on an evaluation of trash removal options in Ballona Creek. In that report, Public Works committed to promptly initiate preliminary design and concurrently move forward with environmental documents required for grant eligibility. Petitioners are informed and believe that this memorandum was only submitted to the Supervisors, individually, not to the Board as a whole.

On October 1, 2019, Public Works submitted details for its proposed multi-year, multi-agency plan to reduce trash and debris littering (the “Plan.”) that responded to and was consistent with the explicit directions stated in the Motion. In that Plan, in the short-term Public Works represented to the Supervisors that it continued “to enhance trash collection along Ballona Creek . . . including modifications to the existing trash net system located downstream from Lincoln Boulevard . . . [a]dditional design modifications . . . increased the frequency of the trash removal . . . two additional trash net systems . . . and the Department of Beaches and Harbors operates a skimmer boat and two fixed trash skimmers and conducts daily letter removal along the beaches.”

Also in The October 1, 2019 report, Public Works stated it had initiated the preliminary design of a long-term engineered solution at Alla Road which involved construction of a side channel trash removal structure and in that report, Public Works committed to the preparation of the CEQA documentation (the “Alla Road Program”) an important element of the Plan, among many other programs and coordination with the municipalities that make up the Ballona Watershed area.

Petitioners are informed and believe that the Public Works intended for the Alla Road Program to provide the permanent solution to the County’s efforts to clean debris from the Creek. With respect to the removal of micro debris, bacteria, toxins, which were a part of the Plan, Public Works reported that the matter had been handed off to the City of Los Angeles who

had received grant funds with which to plan and to install three low-flow diversion projects to divert urban runoff to the sewer system for treatment and recycling which would remove bacteria, toxins, and smaller pieces of trash, and significantly divert to the Hyperian Water Treatment Facility urban run-off to be treated for recycling and reuse.

Petitioners are informed and believe that this October 1, 2019 memorandum also was only submitted to the Supervisors, individually, and not to the Board as a whole. The public record offers no explanation for what appears to Petitioners to be a procedural irregularity as the chosen method of responding to the Motion. The County and the Board cannot act through its individual members.

No mention of the Interceptor was made in any part of the March 1, 2019 Motion. Nor was it identified in the June 17, 2019, Memorandum from Public Works provided to each of the Supervisors. Most importantly, there is no mention of the Interceptor in the October 1, 2019 Plan.

Notwithstanding, Petitioners contend that this October 1, 2019 memorandum meets and fulfills the Board's second specific instruction from the that Public Works "develop a multi-year, multi-agency plan to reduce trash and debris littering local beaches near the Ballona Creek outlet. . ." As such, and regardless of the form it was delivered to the Board, the October 1, 2019 report and the Plan identified therein, represents the development by the County of a master plan and a program to reduce trash and debris from Ballona Creek. As will be further considered below, this step consisted of sufficient detail and specificity as to constitute a "project" as defined by CEQA, which requires the County's commencement of a process to consider the environmental consequences at the earliest stage possible.

Petitioners are informed and believe that independent of the process set into motion by the Board's adoption of the March 19, 2019 Motion, and outside of the Public Works' planning, coordinating, consulting with other municipal agencies, etc. and outside of the consideration given by the individual members of the Board of Supervisors who each individually received the Public Works June 17, 2019 memorandum and the October 1, 2019 memorandum all of which were silent about the Interceptor, Supervisor Hahn was leading an effort to utilize the Interceptor for the trash removal instead of any of the 5 alternatives identified in the Motion and memorialized in the Plan.

In fact, Supervisor Hahn was actively engaged in advancing the Interceptor as the solution to cleaning Ballona Creek at least as early in 2019 and continuing throughout 2019. Petitioners are informed and believe that sometime in or about February 2019, Supervisor Hahn caused the choosing of a site for the Interceptor east of the Pacific Avenue bridge at the south end of the lagoon between two residential areas. In or about, April 15, 2019, Supervisor Hahn arranged a press conference to announce the County's "commitment" to the Interceptor. This was an inaccurate statement factually and legally because it did not reflect any action taken by the Board, it was inconsistent with the Motion, it had not been publicly reported to Public Works or to the Board, nor had there been an environmental review of this so-called "commitment." The public record offers no explanation for Supervisor Hahn's efforts to advance the Interceptor or her statement of commit to it on behalf of the County in a press conference.

The first evidence of the appearance of the Interceptor on the record occurred at a meeting of the Supervisors on November 5, 2019. At that meeting, the matter of authorizing the Los Angeles County Flood Control District (“District”) to enter a contract with TOC to accept the use of the Interceptor for a two-year long “pilot project (the “Pilot Project.”) Also presented was a proposed Notice of Exemption (“November 5, 2019 NOE”), to proceed with deployment of the Interceptor exempt from additional compliance with CEQA.

The Interceptor is a trash barge sitting on top of a catamaran that is semi-enclosed by a shell designed to conceal a conveyor belt and a series of trash bins that lie within it, what is intended to be tethered to the adjacent jetties on both sides of the Creek, with trash booms directing trash towards the conveyor belt.

A significant missing element of this so-called “action” taken by the Board is the absence of any evidence submitted to the Supervisors about the Interceptor at all, including its efficacy. Nothing in the record establishes that the Interceptor has the potential to remove garbage more effectively than the system Public Works had deployed at the time.

Petitioners are informed and believe that the record contains no explanation for why Supervisor Hahn’s early interest in the Interceptor was not included in any of the Public Works’ reports to the Supervisors reports; or why it was not referenced in the March 19, 2019 Motion, although chronologically it could have been, or why it jumped ahead of the elements and alternatives Public Works had considered and discussed degree of detail in the Plan without any record of prior notice to the public or to Public Works. The public record offers no explanation for why the Board disregarded the Plan and the work that had been completed up to that point in time by Public Works to respond to the Board’s Motion.

Petitioners are informed and believe that the Board voted to authorize the District to enter into a contract with TOC without any supporting evidence in the record regarding the Interceptor, how it worked, its successes and failures in other places it had already been deployed, reasons why it will assist the County to meet the goals set out for Ballona Creek and the Plan or how it was consistent with the Motion, among other missing pertinent and required information. Perhaps it is the absence of any cost to the County that allowed the matter to be authorized but that is not the only consideration County was required to consider. The record contains no information that the Interceptor is a superior alternative to those identified in the in both the June 17th Memorandum and the October 1, 2019 Plan that the Supervisors requested by their March 19, 2019 Motion. Petitioners are informed and believe that notwithstanding the absence of cost for accepting the Interceptor, County has spent considerable sums of money to obtain authorization of it and will continue to spend considerable sums of money to operate and maintain it. The taxpayers are entitled to know these costs, not only in the form of a line item on a budget adopted by the Board, but as an element to allow an informed discussion of County’s commitment to solve a well-recognized problem.

Petitioners contend that for purposes of considering compliance with CEQA, the authorization to contract with TOC represents a small piece of the much more expansive Plan to reduce the unwelcome foreign substances within Ballona Creek that pollute the Ocean, litter the beaches, detract from the Wetlands, and are damaging to the wildlife that live near and in many cases rely on the Creek and Wetlands as their habitat. As a small piece of that multi-agency and multi-year plan that has been carved off of the totality of the Plan that the Board committed to create by its Motion, County's consideration of the Interceptor constitutes an improper "piecemealing" of the whole of the project as defined in CEQA. Also, as discussed more completely below, the deployment of the Interceptor itself is not a self-contained action, but instead it has wide-ranging environmental consequences that must be fully considered to comply with CEQA.

For example, despite unambiguous statements including commitments by Public Works to proceed with implementation steps with target dates regarding the processing of the Alla Road Project, Petitioners have made a futile search for any evidence in the record that these commitments have been fulfilled.

Petitioner is informed and believes that one of the undisclosed outcomes of the adoption of the Interceptor is that it has resulted in tabling the Alla Road Project as a permanent solution to the challenge of cleaning Ballona Creek. Public Works has publicly admitted that if the Interceptor project is successful (without providing the Board or the public how it intends to measure success) then permanent implementation of the Interceptor will replace the Alla Road Project.

Petitioners are informed and believe this means that the earliest the Alla Road Project will begin to move forward again will be in April 2024 at the end of the storm season and thereafter it will require an additional 2-3 years for design and environmental analysis. This means that the Alla Road Project will have been delayed between October 2019 and 2027. This delay is a part of the scope of the Interceptor that requires full consideration of foreseeable environmental impacts.

Petitioners are informed and believe that the record contains no explanation or environmental analysis despite the many facts raised herein of what appears to be a wholesale abandonment of the Plan and of the directives commenced by the Motion.

III. NONCOMPLIANCE WITH CEQA

A. CEQA PROCESS

Petitioners contend that for the many reasons alleged herein, the County failed to comply with the notice requirements set forth in CEQA regarding its intentions to deploy the Interceptor including the approval of the November 5, 2019 NOE (the "NOE.")

In addition, Petitioners contend that for the many reasons alleged herein, the County failed to comply with the substantive requirements of CEQA, including those that specially apply to proceeding by a notice of exemption under CEQA.

The NOE was not sufficiently specific about the location proposed for the Interceptor. The figure attached to the NOE posted by the County Clerk depicted an overly vague and large area proposed for deployment and the location of the Interceptor has been an issue of considerable concern to Petitioners and has moved at least twice in the process and Petitioners are informed and believe there is an intention to move it a third time. Consequently, Petitioners contend the NOE failed to provide adequate notice of the Project .

The NOE prepared by Public Works contained several pages of discussion that were not posted by the County Clerk. By this omission, Petitioners contend they were deprived of adequate notice of the Project.

The NOE submitted to the County Clerk was superseded by a document dated March 8, 2021 (the “Second NOE.”) The Second NOE constitutes an admission of a material flaw in the substantive analysis stated in the November 5, 2019 NOE. In or about August 2020, Public Works engaged a consultant to investigate the potential impacts on biota and report back with: 1) a Biological Resources Technical Report; 2) Essential Fish Habitat Assessment; 3) Marine Biological Technical Study; and 4) a “cultural resources investigation.” Petitioners are informed and believe that these studies were demanded by agencies whose approval were required prior to proceed with the Interceptor which constitutes evidence that the failure by Public Works to have done them in advance of the NOE was a deficiency regarding the requirements under CEQA to fully evaluate these issues. Furthermore, the Second NOE characterized its November 5, 2019 NOE as based on a “Preliminary Environmental Evaluation.”

The Second NOE is described as “an environmental evaluation of the (Interceptor project)” based on “new information about the (Interceptor project) has become available” Petitioners are informed and believe that t Second NOE has never been provided to the County Clerk or to OPR for posting. By this omission, Petitioners contend they were deprived of adequate notice of the Project.

Petitioners are informed and believe that County made no affirmative effort to reach out to the residents in the area before the Petitioners discovered what the County was intending regarding the Interceptor in May, 2021. Petitioners’ first alert that something was underway related to the Interceptor on or about May 3, 2021, when a person who resided within 120 yards of the proposed location, , for the Interceptor noticed a formal meeting of approximately 8 or more professionally dressed individuals. That observation prompted this resident to inquire about the subject matter of that meeting.

On or about May 5, 2021, a civil engineer from Public Works contacted a Petitioner and explained the substance of the Interceptor concept. This was the first occasion in which Petitioners obtained actual notice related to the Interceptor.

On May 11, 2021, a remote meeting occurred between Public Works and Petitioners at which Petitioners expressed great concern about the location of the Interceptor and complained about the lack of notice to the public and the lack of being given any opportunity to participate in

review of the matter. Public Works promised to re-visit the proposed location, engage and involve the Petitioners in its future pursuits, and provide timely information to allow public participation in the considerations regarding the Interceptor project.

Despite these promises and the County's undeniable knowledge that the Petitioners had concerns about the Interceptor project, 2 days later the matter was submitted to the California Coastal Commission without any word of that event.

Petitioners are informed and believe that Public Works deliberately withheld from Petitioners any information about that hearing in a deliberate effort to suppress Petitioners' expression of their grievances beyond the informal conversations that had begun with Public Works. The Coastal Commission approved the item on that date.

On June 9, 2021, a virtual meeting occurred with Petitioners also attended by Supervisor Hahn, the Director of Public Works, Deputy Director Water Resources, Dan Lafferty. In response to Petitioners' expressions of the many grievances including specific objections to the Interceptor project, Supervisor Hahn accepted and admitted fault for County's failure to provide adequate public notice and for failures to provide for any meaningful opportunity to comment on the Interceptor project including the environmental concerns that had just been raised at that meeting.

In front of the Petitioners, Supervisor Hahn then directed Public Works to find a solution to relocate this project East of residential areas or not proceed with it at all. The Director of Public Works promised Supervisor Hahn and the participants of the virtual meeting that his department would go back and review the engineering of project. Based on this instruction from the Supervisor and the promise from the Director of Public Works, Petitioners understood and believed the Interceptor project would be fully reconsidered by Public Works based on input from the Petitioners.

Petitioners reasonably relied on these representations to mean there would be a complete re-consideration of the merits of the interceptor project, that a new process would ensure to allow full public participation in considering the merits, environmental impacts and alternatives to the goal Petitioners agreed with of reducing garbage inundation of the nearby beaches.

Petitioners' reasonable reliance on the County's statements it was going to reconsider the Interceptor was reinforced by a telephone call on or about October 25, 2021, with the Public Works Deputy Director, who is the chief of its Water Resources Division, Dan Lafferty. Petitioners were informed and believed at the time of this call that Mr. Lafferty was chief of the Storm Water Division of Public Works and therefore based on these positions and responsibilities Mr. Lafferty spoke with authority on behalf of the County regarding the Interceptor project. During that call, Mr. Lafferty told the neighbors that: 1) he planned to stop the Interceptor project; and 2) cancel the agreement with TOC. Mr. Lafferty stated that the Interceptor project no longer makes sense because of the intervening changes by Public Works consisting of the addition of two additional trash booms, better nets, and the employment of superior technology that allowed for greater buoyancy during tidal surge. Mr. Lafferty stated that

these steps had eliminated the need for the Interceptor project. Mr. Lafferty also explained that the permanent solution was the construction of a side channel trash removal structure at the junction of the Ballona and Centinela Creeks known as the Alla Road Program.

Petitioners' reasonable reliance was further reinforced on or about December 10, 2021, Carolina Hernandez, Assistant Director of Public Works, Chief Planer for Flood Control, participated in a phone call with Petitioners to discuss the undecided possible locations of the Interceptor. During that call, Petitioners were told the County has no financial liability associated with terminating the agreement with TOC and that County could easily back out of it. The communicated further the possibility that as part of reconsidering the Interceptor, the project may be cancelled altogether. Ms. Hernandez also took responsibility for not communicating with Petitioners from the beginning and promised to remedy this failure in the future.

Petitioners reasonably relied on all of these representations by persons with ostensible authority to commit the County to a course of action, and in reliance thereon, Petitioners ceased the work by an environmental attorney, whom they had retained to pursue legal redress based on their many grievances about the substantive and procedural failures of County's consideration of the Interceptor project including under CEQA.

Much to Petitioners' shock and dismay on or about January 17, 2022, Public Works formally announced, on their website that the Interceptor project was going to proceed, a project schedule was posted, including the scheduled construction intended to commence in April, 2022, with intended deployment of the Interceptor in October for the Pilot Project to run between October 2022 to April 2024.

As a result of Petitioners' reasonable reliance on County's many representations that there would be a reexamination of the Interceptor project including the consideration of input by the neighbors including the Petitioners, the passage of time between the date of June 9, 2021, and January 17, 2022, during which Petitioners did not act to oppose the Interceptor project, that period is tolled based on principals of basic fairness and the doctrine of equitable estoppel with respect to the contention the County might use as a defense against this action based on alleged untimeliness.

B. SUBSTANTIVE NON-COMPLIANCE WITH CEQA

1. "PROJECT" DESCRIPTION

In CEQA, the project description is the *sine qua non*, without which – there is nothing – of environmental analysis. It is indispensable. County has not been consistent about the full scope of the Interceptor as a project as defined in CEQA.

The Interceptor is not an isolated "project" as defined in CEQA. It is a piece of the County's multi- agency and multi-year efforts County in coordination with the municipalities that comprise the watershed area of the Ballona Creek to address the problem of trash and debris

collection prevention and removal methods from the Ballona Creek and including a coordinated effort to obtain grant “opportunities for future in-channel solutions.”

Petitioner is informed and believes there will be no significant difference between the Interceptor project as a pilot and as a permanent project. If the Interceptor project become the permanent solution to address the issues Public Works was tasked to undertake as identified in the Plan, County has admitted that will prepare a full environmental impact report. This constitutes an admission that the County believes that implementation of the Interceptor project now has the potential to adversely impact the environment which will necessitate consideration of mitigation measures and alternatives to avoid the identified impacts. Thus, County’s representation that the project is only a “pilot” is inaccurate, misleading, understates its full scope and minimizes the environmental considerations, based on alleged temporal considerations as opposed to physical changes to the environment. CEQA does not excuse compliance based on the duration of the impacts. This artificial distinction lacking support in the law also fails to take into account a foundational requirement of CEQA to analyze to the extent feasible all of the identifiable and reasonably foreseeable impacts at the earliest opportunity.

The scope of the Interceptor project is also significantly wider than has been admitted by the County. Public Works has admitted to the public that if the Interceptor is successful, then the Interceptor will replace the Alla Road Program. This also constitutes an admission that the Interceptor is not an isolated matter but rather it is a piece of the whole of the greater project as defined by CEQA – essentially admitting to improperly piecemealing under CEQA. More importantly to the events of the moment, the cessation of the processing of the environmental and other design and planning documents for the Alla Road Program since at least November 2019, illustrates the wider scope of the impacts of proceeding with the Interceptor that were never considered under CEQA.

Whether or not County has piecemealed the project review of the Interceptor, CEQA requires review at the earliest opportunity that a meaningful environmental analysis can occur. The whole of the project – the Plan has never been environmentally considered. Given the direction to develop a multi-year and multi-agency Plan, County erred not authoring the development of the appropriate environmental analysis of the “whole of the action.” This failure could have easily been avoided. CEQA has a very carefully developed set of procedures designed to reduce costs and redundancy while at the same time fully considering environmental impacts based on the allowance of “tiering” as defined in CEQA. Had County certified a full master or program EIR for the Plan, conceivably the approval of the Interceptor could have been by a NOE tiering off of the master EIR. But, since no aspect of the Plan has been environmentally considered, that possibility has not occurred.

The NOE does not perform the role of environmental analysis of all aspects, direct and indirect impacts of the Interceptor. For an example, driving the garbage downstream from the location it is currently being collected, which is upstream of the Wetlands, and allowing the garbage to float passed the Wetlands, constitutes a physical change to the environment. That component of the Interceptor has not been considered in either of the NOEs.

The restoration of the Wetlands has been formally established. In the future, the Creek will meander through the Wetlands. The likelihood is that tidal action will do to the Wetlands what tides currently do within the Ballona Creek channel, i.e., leave a “dirty bathtub ring” of garbage. The marsh grasses of the Wetlands will trap garbage as or more effectively as can be observed in the channel now. Tidal action varies and there are times that a very high tide is not equaled or surpassed for long periods of time – up to months that would be necessary to retrieve the garbage back to pull it back into the Creek. Also, perversely higher succeeding tides could drive the garbage deeper into the Wetlands. None of this is a possibility when as now the garbage is retrieved upstream of the Wetlands. CEQA requires that the project definition include the relative change regarding the physical change to the environment, including the relocation of the removal of the garbage until after it had passed by the Wetlands.

Another environmental issue that is fundamental to the method required for the Interceptor to perform its intended mission is the assumption that fresh water that travels down the Ballona Creek is necessary to drive the garbage out toward the Ocean before, at the very end of the journey, it gets picked up by the interceptor. Citizens of Los Angeles County are not allowed to hose down their driveways because of water scarcity. Yet the Interceptor cannot work without untold gallons of water that must flow down to the Interceptor and then promptly out to the Ocean, wasted. This implicit fact is built into the operation of the Interceptor. The waste of recyclable and reusable stormwater and urban runoff was not been considered in either of the NOEs. The scope of the project includes the admission of the amount of fresh water necessary to allow the Interceptor to perform its intended function.

A complete environmental analysis requires identification and consideration of any “conflicts” between the proposed matter and plans, policies, and regulations adopted to avoid or mitigate environmental impacts. As with the previous paragraph, the Interceptor wastes a vast amount of fresh water that could be captured, cleaned and re-purposed. The reliance on wasting fresh water by the Interceptor directly conflicts with the direction of an overwhelming majority of voters who approved Los Angeles County Measure W, which has been championed by the County and the other municipalities that share the Ballona Creek watershed. This is just one more example of the types of big environmental issues that are overlooked when the approving agency fails to examine the “whole of the project” including conflicts with environmental plans, policies and regulations.

To test the efficacy of the Interceptor, the current floating boom system will have to be opened, otherwise there will be less, little or perhaps no garbage flowing down the Ballona Creek to the Interceptor. The record amply demonstrates that in all but storm events, the Creek has no discernable garbage and even after a storm event, there is little if any appreciable amount of garbage that escapes the current 3-boom system. Thus the Project description must include the removal of the current floating boom system. With the booms deployed in the place they are currently, there is no reason for the Interceptor. The removal of the booms will constitute a profound change in the environment as discussed below.

County has not been forthcoming about this material change in the environmental circumstances of the “Pilot Project” by failing to disclose them. The failure to disclose this

material fact distorts the environmental analysis in many ways – but most significantly it conceals the most fundamental question of interest to the public - is there currently a problem and if so is the proposed method of deployment of the Interceptor the best solution, whether environmentally or fiscally?

2. SUBSTANTIVE DEFECTS IN THE NOTICES OF EXEMPTION

The posted NOE did not have any supporting attachments as part of the document sent to the County Clerk for posting, with the exception of an illustration of a proposed location. The “backup” was contained in an Inter-Office Correspondence between two different offices of the Stormwater Quality Division. Petitioners never saw these materials until well over one year later. The County performed a subsequent “Environmental Evaluation” reflected in an internal letter between staff members of County’s Stormwater Division dated March 8, 2021 that supersedes County’s November 5, 2019 NOE (“Second NOE”) The Second NOE states it is based on changes to the project, and on studies of subjects that occurred after the posting of the November 5, 2019 NOE.

These studies looked at Biological Resources and Cultural Resources which in the November 5, 2019 NOE were determined not to involve any potential significant impacts. However, there was no study done to support those findings. Not until 17 months later were these studies conducted. CEQA does not allow conclusions without supporting substantial evidence. The after-the-fact consideration of these two subjects constitutes an admission that the November 5, 2019 NOE lacked substantial evidence to support its conclusions regarding Biological Resources and Cultural Resources.

Furthermore, the Second NOE states: “the Pilot Project’ is not located within a Significant Ecological Area as it was moved downstream of the Ballona Wetlands (Los Angeles County 2020),” From this statement it reasonably can be inferred that the previous location of the “Pilot Project” was formerly located within or at least near a Significant Ecological Area until it was moved. But an examination of the Los Angeles County Department of Regional Planning GIS – NET website (http://rpgis.isd.lacounty.gov/Html5Viewer/index.html?viewer=GISNET_Public.GIS-NET_Public and also https://planning.lacounty.gov/assets/upl/project/gp_2035_2014-FIG_9-3_significant_ecological_areas.pdf shows that both sides of the Ballona Creek east of Lincoln all the way to the Esplanade, a couple of blocks from the Ocean is designated as SEA by the County.

In fact, the biological importance of the Ballona Wetlands goes beyond the system County uses to designate precious Biological Resources. The Wetlands have received special legislative status by the State of California as follows:

“Ballona Wetlands consisting of 553 acres in Los Angeles County is proposed for designation as an ecological reserve for the protection and enhancement of coastal salt marsh and freshwater marsh habitats, and associated species, including the state listed endangered Belding’s savannah sparrow. The area is also an important wildlife movement corridor to other public lands in the vicinity of the wetlands.

The reasons for listing this property in Title 14 are to regulate public use and provide the best available protection for the species and habitats the property was acquired to protect.” Section 630, Title 14, California Code of Regulations, relating to Ballona Wetlands Ecological Reserve, 2005.

The failure to measure the potential significant impact against this special status created by the State Legislature, and reliance only on the County’s designations of areas of ecological significance, reveals the limits of County’s consideration of the potential Biological Resources impacts.

The Second NOE states without supporting evidence that aside from the Biological and Cultural Resources, none of the remainder of the listed Appendix G criteria were affected by the changes and the new information. The Second NOE summarily concludes without consideration, analysis or support that none of the other items listed require further consideration. However, the change of location constitutes a substantial change in the project, as shown by the issues addressed below, which will require a reconsideration of the County’s environmental analysis and conclusions including proceeding by reliance on a NOE.

The Second NOE states it was made necessary based on substantial changes proposed in the project – significantly its location. This includes moving it considerably further downstream towards the breakwater that protects the Creek and the channel access to the Marina del Rey. The haul out for seals and sea lions is not far downstream from the proposed location of the Interceptor. Petitioners often view seals swimming up the Ballona Creek well upstream of the Pacific Avenue Bridge and therefore through the location proposed for the Interceptor. Petitioners also see large flocks of pelicans diving for fish in the portion of the Creek adjacent to the proposed location of the Interceptor

These observations strongly support the inference there are fish and not only tiny fish, in that part of the Creek. What happens to those fish if retrieval of the garbage is moved downstream from where it currently is retrieved, which is not a deep portion of the Creek, is not infiltrated by as much or even any tidal water, and therefore is an entirely different biome? The evidence does not support the conclusion that the move downstream does not significantly impact these observed aspects of the impact on Biological Resources.

There is no mention in the Second NOE of the use of the Creek by seals despite the move of the Interceptor right into the middle of this use of the Creek and significantly closer to the haul out. This move constituted a major change with great potential adverse environmental impacts that seemingly were not even considered.

It appears that the Second NOE admits that at its former location, the proximity to the Wetlands could cause an adverse impact on Biological Resources. This comports with common sense, informed by the function a wetland or tidal marsh plays in the food chain and the preservation of rare and endangered species, which is the reason so much resource is being applied to the preservation of these scarce resources.

It is important to note that the garbage, especially during the days without a storm event, will ebb and flow with the tidal currents. This means it will flow upstream for the same amount of time as downstream. The unaddressed issue is the extent to which the garbage, that currently is being caught upstream of the Wetlands, will inundate the Wetlands because the new program requires that it float passed the Wetland before it is captured and removed. The implied admission in the Second NOE of potential adverse impact on the Wetlands has not been adequately considered in the document relying on the new location of the Interceptor downstream.

Another new consideration arising out of the relocation of the Interceptor downstream of the Pacific Avenue Bridge is that it will place the Interceptor, the booms and the garbage directly in the line of view from the Pacific Street Bridge towards the Ocean, thus directly into and spoiling a primary scenic view. Petitioner Kailes, who lives at this location, observes that on weekends and holidays, the area provides a wide-ranging recreational resources including biking, running, rowing, fishing, and viewing the water. These facts, stated by Petitioner to establish the adverse impact on Aesthetics and Recreation are based on personal observations concerning nontechnical matters like these which constitutes substantial evidence under CEQA. For reasons not disclosed in the Second NOE, these impacts were discounted to zero. The evidence does not support this conclusion.

One important and unanswered question involving the Appendix G consideration of Water Quality arises of the amount of time the garbage remains in the water. During non-storm events, the tides will bring the garbage back and forth in a portion of the Ballona Creek where water quality is important to seals, and fish both now and in the foreseeable future when the Wetlands has been restored. Upstream, there is little or no water so the garbage can lie on as dry concrete channel floor or along its sides for months without any impact on the environment. Whereas garbage not collected and hauled out of the Ballona Creek upstream which will occur in a far more sensitive part of the Creek will reside in the water for perhaps a very much longer period, decreasing the water quality. The change in location exacerbates this problem not considered in either of the NOEs.

This also raises the question of how long the garbage will sit in the bins during the dry season when urban runoff and tides will not bring any appreciable amount of garbage downstream. This will invariably enlarge the time necessary to fill the bins in the Interceptor.

The Second NOE was required to identify and consider materially changed circumstances surrounding pertaining to the undertaking of the project. The Second NOE failed to acknowledge or consider perhaps a most important and materially changed circumstances - the final environmental impact report to restore the Ballona Wetlands Ecological Reserve by the California Department of Fish and Wildlife. The restoration project aims to restore the ecological function of 566 acres of the reserve, which lies between the Santa Monica Bay community of Playa del Rey and sprawling Marina del Rey and is divided by the Ballona Creek. CEQA requires compliance based on the current environmental circumstances, not one that has been obviated by material changes in the land use designations. This certification of a plan and policies adopted to protect the environment gives rise to new land use considerations and

whether the Interceptor conflicts with the final designation of the Ballona Wetlands Ecological Reserve. The Second NOE relies on the faulty original NOE and overlooks this material change in the circumstances.

Water Resources is another Appendix G factor that was not properly considered in the original NOE nor rectified in the Second NOE given the material change in circumstances between the first and the second. The issue Water Resources in the present requires consideration of the impact on the mandate to recapture and recycle and reuse storm water to address the long-term expectancy of drought conditions. In November, 2018, voters of Los Angeles County voted overwhelmingly to adopt Measure W. On or about 2019 County enacted Chapters 16 and 18 of the Los Angeles County Code to begin to implement the mandates arising from that measure. As alleged above, to use precious water to drive the garbage downstream before it is picked up at the end of the Ballona Creek, the Interceptor relies on untold quantities of wasted (not reclaimed, recycled and therefore not useable) fresh water that will wash into the Ocean without any other purpose. The County's legislative actions to implement Measure W constitutes a material change in the circumstances regarding Water Quality, that was not considered in the original NOE or the Second NOE.

Another materially changed circumstance since the original NOE was prepared was the installation of one of the alternatives suggested in the October 1, 2019 Plan, i.e., the implementation of improved technology used to float the trash intercepting boom, and add significantly, the addition of two new booms. Petitioners, who live adjacent to the location of the Interceptor almost never see garbage floating in the Ballona Creek below the Pacific Avenue bridge, including after most storms. Petitioners are informed and believe that by this deployment County made vast improvements to the restraint of the garbage such that little of the garbage the size and type that the Interceptor is capable of recovering escapes to go downstream towards the Ocean. The record contains no evidence about the efficacy of this intervening 3-boom solution that the Interceptor is intended to address that was implemented subsequent to the vote of the Board to authorize Public Works to partner with TOC and the adoption of the November 5, 2019 NOE. In other words, there is a new baseline and there is not information about it.

CEQA is a legislative policy requiring transparency and full disclosure of all of the environmental issues that arise directly and indirectly, primary and foreseeable secondary and reasonably foreseeable future impact of any proposed changes in the environment. This Petition raises many examples of County's deliberate concealment from Petitioners of material facts that CEQA requires the County to disclose. Petitioners are informed and believe that County incorrectly determined that it had a "free-pass" to proceed with the Interceptor because the Supervisors had adopted a NOE at the earliest stages of development of the project regardless of intervening changes to the project and to the relevant circumstances surrounding the project. Based upon an extensive review of the documents that will comprise the record, Petitioners can now prove this concealment and County's bad faith in regards to public engagement as issues, problems, and changes were made regarding the Plan and the Interceptor project in particular.

3. THE PROJECT DOES NOT QUALITY FOR A CEQA EXEMPTION

The Second NOE is defective because the 2-year “Pilot Project,” intended to operate 365-days a year, even during the dry season during low flow, so-called urban run-off, is not a feasibility study under CEQA. Gathering data is the secondary function of the “Pilot Project.” The first is gathering and disposing of garbage. CEQA does not allow the ancillary function to dictate an exemption.

Moreover, the Interceptor will be fully operational throughout the 2-year “Pilot Project” in the same way manner as it will be if it were to become permanent. This reveals the permanence of the project as opposed to its secondary function - data collection. Since the County admits that before becoming permanently operational, a full environmental analysis will be conducted, then the principal of requiring a full environmental analysis at that time constitutes an admission that one is required at the present – before it becomes operational.

CEQA Guidelines Section 15262 - Feasibility and Planning Studies – relied on by Respondents to proceed with this so-called “Pilot Project” is inapplicable because the Project that was authorized contemplates a present action – deployment of the Interceptor, operation and maintenance. The possibility of additional action in the future will be the same or at least functionally the same.

The record demonstrates that the Project involves several complex, interrelated changes to the physical environment with environmental consequences, not simply the placement, operation and maintenance of the Interceptor as incorrectly stated in the NOE. The whole of these several direct and indirect changes to the environment ranges far beyond a “feasibility and planning” study. The mischaracterization that the Project involves merely data collection to justify a Feasibility and Planning Studies exemption Planning Study is not supported by the facts. Therefore, the Project does not qualify for an exemption under this section of CEQA.

Moreover, a project seeking an exemption based on “feasibility or planning studies” for possible future actions must be one that the agency, board, or commission has **not** approved, adopted, or funded. The Board authorized Public Works to enter into the contract with TOC by a formal motion that was adopted by the Board. This constitutes a second grounds on which the Project fails to qualify for an exemption under this section of CEQA.

All of the same allegations that deny the Project is exempt under CEQA Guidelines Section 15262, apply equally to CEQA Guidelines Section 15306, Information Collection, Class 6 and therefore are incorporated here as though fully set forth. CEQA Guidelines Section 15306 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. Because this exemption may be used strictly for information gathering purposes, or as part of a study leading to an action which a public agency has **not** yet approved, adopted, or funded, this Project does not qualify for an exemption under this section of CEQA.

The Second NOE incorrectly determined that there are no exceptions to the CEQA exemptions described above. However, CEQA Guidelines Section 15300.2 provides that under certain environmental circumstances, the exemptions will not apply.

CEQA Guidelines Section 15300.2(d) prohibits use of an exemption where a project may result in damage to scenic resources. The historic Pacific Avenue Bridge includes a bicycle path that is used by thousands of people on each of most days of the weekends and holidays. In addition, there are viewing platforms for enjoying the ocean, the water, and the seal and sea lion haul outs, a short distance away. It is not uncommon to view a seal swimming up the Ballona Creek near the Pacific Street Bridge, beyond the place where garbage will rest waiting to be picked up by the Interceptor. The relocation of the Interceptor downstream of the Pacific Street Bridge will place the Interceptor, the booms and the garbage directly in the line of view from the Pacific Street Bridge towards the Ocean, thus into the primary view. Establishing these facts to establish the adverse impact on with a scenic resource based on personal observations concerning nontechnical matters like these constitutes substantial evidence under CEQA.

The relocation of the Interceptor west of the historic Pacific Avenue Bridge constitutes a material change regarding the potential impact on scenic resources which is not acknowledged in the Second NOE. The conclusions that there is no impact on this environmental concern is not supported by substantial evidence.

Petitioners are informed and believe that the Second NOE was not sent to the County Clerk for posting. Under CEQA, the statute of limitations is 180 days from the date Petitioners actually became aware of the project, or reasonably should have become aware of it, plus the time that this action was tolled as alleged above.

County cannot proceed with any further approvals or deployment of the Interceptor without first conducting an Initial Study under CEQA to determine whether to proceed with a negative declaration of an environmental impact report required to meet the requirements of CEQA.

Petitioners are informed and believe that currently County is working on a third NOE. That document is currently unavailable for comment. But petitioners cannot be late in challenging the defective CEQA analysis that has not yet been completed.

I appreciate the opportunity to address this matter.

Respectfully submitted,

Corin L. Kahn

cc. clients

County Counsel

Lauren Dods: ldods@counsel.lacounty.gov

Laura Jacobson: ljacobson@counsel.lacounty.gov

Mark Yanai: myanai@counsel.lacounty.gov

Public Works

Cung Nguyen CUNGUYEN@dpw.lacounty.gov

From: [ExecutiveOffice](#)
To: [First District](#); [Holly J. Mitchell](#); [Sheila](#); [Supervisor Janice Hahn \(Fourth District\)](#); [Barger, Kathryn](#)
Cc: [PublicComments](#)
Subject: FW: Ballona Wetlands Implications---Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report (2021)
Date: Friday, April 1, 2022 2:47:48 PM
Attachments: [Screen Shot 2022-02-02 at 11.36.09 AM.png](#)
[Screen Shot 2022-02-12 at 9.50.30 AM.png](#)
[Screen Shot 2022-02-12 at 9.50.30 AM.png](#)
[Screen Shot 2022-02-02 at 11.36.09 AM.png](#)
[Screen Shot 2021-06-25 at 1.10.49 PM.png](#)

The following correspondence is being forwarded to you for your review/information.
Note: This pertains to Agenda Item 54 for the Tuesday, April 5, 2022 Board Meeting.

From: patriciamcpherson1@verizon.net <patriciamcpherson1@verizon.net>
Sent: Friday, April 1, 2022 1:43 PM
To: amy.hutzel@scc.ca.gov; amy.roach@scc.ca.gov; publiccomments@scc.ca.gov; megan.cooper@scc.ca.gov; jon.gurish@scc.ca.gov; jordan.fong@scc.ca.gov; jeannette.macmillan@scc.ca.gov; secretary@resources.ca.gov; mary.small@scc.ca.gov; taylor.samuelson@scc.ca.gov; helen.kang@scc.ca.gov; ann.notthoff@scc.ca.gov; donne.brownsey@coastal.ca.gov; dayna.bochco@coastal.ca.gov; carole.groom@coastal.ca.gov; caryl.hart@coastal.ca.gov; sara.aminzadeh@coastal.ca.gov; john.ainsworth@coastal.ca.gov; andrew.willis@coastal.ca.gov; stephen.padilla@coastal.ca.gov; mike.wilson@coastal.ca.gov; katie.rice@coastal.ca.gov; linda.escalante@coastal.ca.gov; roberto.uranga@coastal.ca.gov; meagan.harmon@coastal.ca.gov
Cc: paul.koretz@lacity.org; andy.shrader@lacity.org; mike.bonin@lacity.org; mike@11thdistrict.com; len.nguyen@lacity.org; Wilson, Jayme <JWilson@bos.lacounty.gov>; Gonzalez, Daritza <DGonzalez@bos.lacounty.gov>; Laura Muraida <LMuraida@bos.lacounty.gov>; Freeman, Sophie <SFreeman@bos.lacounty.gov>; Gaidzik, Zachary <ZGaidzik@bos.lacounty.gov>; Holly J. Mitchell <HollyJMitchell@bos.lacounty.gov>; holly.shand@resources.ca.gov; ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>; Waldron, Jessalyn <JWaldron@bos.lacounty.gov>; ari.ruiz@asm.ca.gov; samuel.liu@sen.ca.gov; todd@cardiffllaw.com; carolyn_lieberman@fws.gov; kate.huckelbridge@coastal.ca.gov; christine_medak@fws.gov; hamilton.cloud@mail.house.gov; katharine.moore@sen.ca.gov; olin.wibroe@sen.ca.gov; rexfrankel@yahoo.com; lesliepurcell@gmail.com; rafiqui.i.talukder@usace.army.mil; aaron.o.allen@usace.army.mil; mgriswold@landiq.com; nancy.vogel@resources.ca.gov
Subject: Ballona Wetlands Implications---Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report (2021)



Patricia McPherson President
 Jeanette@SaveBallona.org (310) 721-3512

California Coastal Conservancy (please distribute to all Board Members) , Coastal Commission Board Members & Staff,



Ballona Bay= Coastal Conservancy's & Dept. of Fish & Wildlife's FEIR Plan.

Subject: Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report
 The Bolsa Chica Final Report, provides a **RED FLAG** warning for 'restoration' of Ballona Wetlands Ecological Reserve which is currently 100% approved by both the California Department of Fish & Wildlife and the California Coastal Conservancy for their unified approval/certification of the Final Environmental Impact Report (FEIR) for Ballona Wetlands Ecological Reserve's restoration project. The 100% approval/certification of their mutual FEIR Plan intends to heavily engineer the removal of the current levees and create a full tidal inlet into Ballona Wetlands for the creation of a saltwater bay. The comparison to Bolsa Chica serves well as a warning for such 100% Conservancy and CDFW devotion against performance of a Groundwater Dependent Ecosystem study of Ballona--which is what Ballona is now acknowledged as being. Still, no hydrology evaluation has been allowed to be performed by the Conservancy in its control of Ballona's bond funds that were designated for just such necessary evaluation. CDFW is required under its own Section 1019 Code of Regulations to perform a Land Management Plan (LMP) for Ballona yet has not. The LMP per CDFW regulations would require hydrologic evaluation of Ballona. Perhaps both the Conservancy and CDFW refuse to actually understand Ballona because both have been engaged in diverting and wasting the freshwater resources away from Ballona Wetlands. Both have been part of misleading the public and ensuring that no hydrology study of Ballona itself will occur.



Litigation against CDFW & Playa Vista, gave rise to the Ca. Coastal Commission's order to cap the unpermitted drains that violated the Coastal Act, harming the freshwater hydrology of Ballona.

<https://saveballona.org/jvstop-drying-out-ballona-wetlands-ecological-reserve-stop-playa-vistas-confiscation-and-throw-away-ballonas-freshwater-resources.html>

The March 24, 2022 Coastal Conservancy (Conservancy) Board Meeting wherein, Board Chair,

Bosco stated that the restoration of Ballona was an *'ever moving target'*, alluding to an openness for a substantial change from the current plan being available. Such pretense lies in their FEIR 30% Plan completion, intimating that this leaves room for another alternative is false. The target is 100%, to turn Ballona, as was Bolsa Chica, into a fully tidal saltwater bay and to ignore any attempts to study Ballona's own unique freshwater hydrology which includes multiple underlying freshwater aquifers that will, most certainly be negatively impacted with contaminated saltwater intrusion from both Santa Monica Bay and toxic effluent from the Ballona Channel- once Ballona's levees are demolished and Ballona is dug out below sea level. New 200-ft wide, 20-30 ft high perimeter levees included in the 'Plan' are engineered to Army Corps of Engineers standards which require mowed grass surfacing for visual inspection for vector control against burrowing animals. The miles of bikeways and foot paths already in existence will be destroyed to make way for new pedestrian accessways atop the new non habitable levees that will hover over roadways as if within canyons and block any views of Ballona.

Neither CDFW nor the Conservancy are listening.

The March 24, 2022 Meeting, Board Members, who approved a \$500,000 grant to hire contractors to achieve 'communications' between the public and the Conservancy also made sure that the public, in attendance, would not be heard--at first granting 2 minutes each for public comment but quickly changing their minds turning it into only one minute. A commenter called their behavior, 'gas lighting' stating, *"Let's be honest, let's be real. You want the feedback you want. You have an agenda, and it is truly gaslighting to talk of seeking community input when you really just want a community stamp of approval for your agenda. It's so cynical, it breaks my heart."* The last commenter stating, *"This is not a process, this is doing what you want to do. ... So, I'm asking each and every one of you to resign immediately."* They couldn't be bothered with communication. And, certainly even written comment submitted days earlier, received no response whatsoever. <https://www.youtube.com/watch?v=OeHB76eRRHs> Item 10, Starting at 1:54:44.

Ballona Ecological Reserve was acquired for the Purpose of protecting its freshwater resources, its saltmarsh habitat, its endangered species --with attention to Belding's Savannah Sparrows and their pickleweed habitat, and protection for its wildlife corridors. All of this, legally established in 2005 under Title 14, Section 630 with Ballona having these conditions as Ballona's own specific reasons for acquisition. And, that per the CDFW Ca. Code of Regulations 1745, any and all agencies and/or non profit agreements or contracts shall abide by the Purpose for which the Ecological Reserve was acquired. The Ca. Fish & Game Commissioners approved Ballona in 2005 as a Terrestrial, NonMarine Ecological Reserve, yet now, both the Conservancy and the Department of Fish & Wildlife are acting inconsistently with Ballona's legal standing and are both dodging any response to these issues.

California Regulatory Notice Register 2005, Volume No. 20-Z, Starting on page 663 Ballona Wetlands Ecological Reserve

https://www.dhcs.ca.gov/services/medi-cal/Documents/AB1629/ZREG/ZREG_20-Z_5.20.05_notice.pdf

The very reasons for which Ballona was acquired are slated for near, mid and long term destruction according to the Final Impact Report's own modeling study which shows that Ballona's rare salt pannes and Belding's Savannah Sparrow 's salt marsh habitat will deteriorate into mudflats and open water. Bolsa Chica serves not only as a Red Flag Warning but provides proof of an experiment gone wrong, with its saltmarsh habitat destroyed via succumbing to open saltwater and mudflats due to its engineered tidal inlet.

Please review the [Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report.](#)

We have the time and we have the proof of need for a natural alternative for Ballona Wetlands Ecological Reserve. We have a consensus building model, as was utilized for the Owens Valley Dust Control Project--Habitat Restoration Plan. Dr. Margot Griswold was an intrinsic part of this collaborative, consensus building partnership which resulted in an exceptionally positive habitat outcome and protection to the environment and the public. Ballona is a far smaller project with far fewer variables and is an Ecological Reserve that is sustainable via its own natural freshwater resources.

<https://saveballona.org/ballona-wetlands-ecological-reserve-full-freshwater-2022-photos-after-rain.html>

The 2021 released study, **Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report**, clearly demonstrates the need to carefully assess each and every 'restoration' project for its individual and unique history and natural resources. Bolsa Chica delivers the results of 15 years of experimentation in opening wetland/upland habitats to full tidal inundation via the opening of a tidal inlet in 2006 in tandem with various other 'phased engineering' attempts that ultimately have given rise to the demise of coastal salt marsh habitat, an unsustainable dredging project and a loss of targeted endangered species survival. Already, the loss of coastal salt marsh habitat has occurred via an inability to control the saltwater influences, resulting in open water habitat and mud flats. Now, Sea Level Rise will also be a contributing factor to the habitat and wildlife destruction at Bolsa Chica which now requires immediate **remediation for its 'restoration'**.

Figure 1. **Long Term Strategic Vision for the Site**... now calls for closure of the tidal inlet and utilization of natural freshwater flows in order to attempt to achieve a sustainable system with adequate hydrology for achieving the coastal salt marsh habitat goals. p. 123 ...

"The Sea Level Rise adaptation efforts at Bolsa Chica have broad ramifications in that the site provides early insight into issues that other coastal wetland systems will face in the coming decades." ES -7 (2021)

"Placement of fill appears the only option available to provide coastal salt marsh habitat under projected Sea Level Rise." ES-6 (2021)

..." need to modify water management to restore wetland vegetation.".. ES-6

" Tidal Inlet abandonment "p. 62 Close the existing tidal inlet to tidal exchangewhich had adverse impact to habitats.

Figure 5-11 -Direct freshwater flows into the site.

Thank you for your attention to these matters of great public concern,
Patricia McPherson, Grassroots Coalition

Subject: Bolsa Chica Lowlands Restoration Project Sustainable Alternatives Study Final Report
LINK- One can Scroll down to the Report at the bottom right hand side of the Bolsa Chica Landtrust HOME PAGE
<https://bclandtrust.org/>

<https://bclandtrust.org/>

From: [ExecutiveOffice](#)
To: [First District](#); [Holly J. Mitchell](#); [Sheila](#); [Supervisor Janice Hahn \(Fourth District\)](#); [Barger, Kathryn](#)
Cc: [PublicComments](#)
Subject: FW: SUPPLEMENTAL OPPOSITION LETTER TO THE INTERCEPTOR PROJECT
Date: Friday, April 1, 2022 3:36:43 PM
Attachments: [final to BOS 040122.pdf](#)

The following correspondence is being forwarded to you for your review/information.
Note: This is for Agenda Item #54 for the Tuesday, April 5, 2022 Board Meeting

From: Corin L. Kahn <clkesq@outlook.com>
Sent: Friday, April 1, 2022 3:25 PM
To: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
Cc: Mark Yanai <myanai@counsel.lacounty.gov>; Laura Jacobson <LJacobson@counsel.lacounty.gov>; Lauren Dods <Ldods@counsel.lacounty.gov>; Cung Nguyen <CUNGUYEN@dpw.lacounty.gov>
Subject: RE: SUPPLEMENTAL OPPOSITION LETTER TO THE INTERCEPTOR PROJECT

Additional grounds the Board should not and may not in compliance with CEQA approve the Interceptor this Tuesday

--

PLEASE NOTE MY NEW CONTACT INFORMATION:

Corin L. Kahn, Esq.
401 Wilshire Blvd
12th Floor
Santa Monica, CA | 90401

Office: 424-252-4714
Email: clkesq@outlook.com

From: Corin L. Kahn
Sent: Tuesday, March 22, 2022 3:47 PM
To: executiveoffice@bos.lacounty.gov
Cc: Mark Yanai <myanai@counsel.lacounty.gov>; Laura Jacobson <LJacobson@counsel.lacounty.gov>; Lauren Dods <Ldods@counsel.lacounty.gov>; Cung Nguyen <CUNGUYEN@dpw.lacounty.gov>
Subject: OPPOSITION LETTER TO THE INTERCEPTOR PROJECT

--

PLEASE NOTE MY NEW CONTACT INFORMATION:

Corin L. Kahn, Esq.

401 Wilshire Blvd

12th Floor

Santa Monica, CA | 90401

Office: 424-252-4714

Email: clkesq@outlook.com

CORIN L. KAHN

ATTORNEY AT LAW

401 WILSHIRE BOULEVARD, 12th Floor
SANTA MONICA, CALIFORNIA, 90401

TELEPHONE: (424) 252-4714

WRITER'S E-MAIL:
CLKESQ@OUTLOOK.COM

OUR FILE NUMBER:

April 1, 2022

VIA eMail Only

executiveoffice@bos.lacounty.gov

Los Angeles County Board of Supervisors
Hall of Administration
500 West Temple Street, Room 383
Los Angeles, CA 90012

**Re: SUPPLEMENTAL OPPOSITION LETTER TO PROPOSED BALLONA
CREEK INTERCEPTOR PROJECT; AGENDA ITEM #54; APRIL 5, 2022**

Dear Honorable Members of the Board of Supervisors:

This letter is an attempt to supplement a lengthy and detailed letter sent to the Executive Office, each Supervisor and to the Department of Public Works dated March 22, 2022, outlining many reasons the Interceptor project is a bad idea environmentally, as a policy, and many examples of how its processing is inconsistent with the California Environmental Quality Act ("CEQA"). This supplement is an additional effort to cause the County to re-examine all aspects of the Interceptor before committing resources to its implementation. All of the material previously submitted is incorporated into this letter by this reference.

INTRODUCTION

Petitioners herein and by their letter dated March 22, 2022, intend to raise many different arguments against the Interceptor. Some of them may seem inconsistent in that they respond to an assortment of possible legal positions the County may take in support of the Interceptor if County decides to move forward with approving it on April 5, 2022. By this letter, Petitioners seek to supplement their opposition to the Department's intentions to proceed with the Interceptor based on policy and environmental grounds as set forth in these two letters.

THE BOARD'S VOTE ON APRIL 5, 2019, WAS NOT AN "APPROVAL" UNDER CEQA

The Department of Public Works ("Department") has taken the position that they have complied with CEQA by the Board's adoption of the Department's November 5, 2019 Notice of Exemption ("NOE") that occurred along with the vote on that same date to authorize the Department to enter into a contract to accept, deploy, operate and maintain the Interceptor.

Petitioner denies that the November 5, 2019 NOE complies with CEQA for the many reasons set forth in its earlier letter and as supplemented here. In particular, Petitioners contend that to date, the County has not taken any “action,” defined in CEQA and therefore the November 5, 2019 NOE cannot constitute compliance with CEQA. Petitioners contend that the first “approval” as defined by CEQA related to implementation of the Interceptor project is currently scheduled for April 5, 2022.

First, the filter for considering the County’s development of a defined course of action begins with the directive adopted by the Board in its March 2019 Motion that the Department develop a multi-year and multi-agency plan to enhance the on-going efforts to clean Ballona Creek. In response, the Department produced a report dated June 15, 2019, and a Plan dated October 1, 2019, both of which defined the Department’s recommended course of action. The Interceptor was not a part of either of those reports.

The June 15, 2019 report and October 1, 2019 Plan were submitted to each of the Supervisors individually. Petitioner is unaware of any action taken by the Board to move forward with anything related to the directive stated in their March 2019 Motion. Indeed, Petition is informed and believes that the matter seeking approval of the Interceptor on April 5, 2022, constitutes the Board’s first approval of anything to advance the subject matter of its March 2019 Motion. This would constitute a defined course of action that meets the definition of an “approval” under CEQA which approval itself must fully comply with CEQA.

In November 2019, The Interceptor was not presented as a defined course of action. There was no linkage made between the Interceptor and the Board’s March 2019 Motion or the two reports prepared by the Department to meet the directive of the Board in that motion. There was no supporting report discussing the Interceptor in comparison with the alternatives that the Department had given careful thought to prior to presentation to each Supervisor. Little or no detail about the scope of the deployment was presented to the Board in connection with the November 5, 2019 authorization vote. As the Interceptor was not presented as a defined course of action, it was not voted on as a defined course of action. For these reasons, it cannot credibly be argued that the November 5, 2019 constituted an approval of the Interceptor that required CEQA approval. To the extent County contends that Petitioners’ opposition to the Interceptor is barred by the passage of time since the November 5, 2019 NOE, Petitioners contend that document was a nullity on the date of its approval and only becomes relevant to the extent it is adopted or incorporated into the action the County is being requested to take on April 5, 2022.

This would render void the November 5, 2019 NOE as not linked to an “approval” defined under CEQA. Only by the Board’s ratification on April 5, 2022, of the November 5, 2019 NOE will that document become relevant to the County’s CEQA process. Nothing in that ratification would change the arguments previously made by Petitioners in their March 22, 2002 letter to the Board that the November 5, 2019 NOE does not comply with CEQA.

Sometime in 2020, the Department implemented improved boom technology, and increased the number of booms to three and moved the early collection of garbage considerably

upstream from where it originally was, all of which was described in both the June 15th and the October 1st reports to the Supervisors. This was simply an enhancement and enlargement of the County's exiting system to catch and remove the garbage from the Ballona Creek. The County has provided figures that demonstrate that this effort was working reasonably well before these enhancements. The intervening implementation of an alternative to the Interceptor, which has the potential to render it redundant, confirms that the County had not yet adopted the Interceptor as a defined course of action.

Over the ensuing 30 months since the November 5th 2019 vote, the Department and TOC sought to find out if their idea was feasible.¹ This is confirmed by the Department's own choice of CEQA Guidelines Sections to exempt from CEQA the study of the feasibility of the Interceptor. Deploying the Interceptor to retrieve the garbage out of the Ballona Creek cannot reasonably be argued to be the equivalent of a feasibility study.

Operating the Interceptor would consist of actual changes in the physical environment, including those direct and indirect changes described in the letter this supplements². Because a study of feasibility is not the equivalent of operating a 2-year pilot which will result in physical changes, they are treated differently under CEQA. The Department's April 5, 2022 request that the County authorize funds, a construction contract, and ratify the efficacy measures of the agreement with TOC, necessary to allow for operation of the Interceptor, is not exempt as a feasibility study under CEQA.

Senior members of the Department told Petitioners that County can back out of the Interceptor project at any time. That constitutes further evidence that the Department never considered deployment of the Interceptor as a defined course of action. It can be assumed that the Board's November 5, 2019 authorization vote that was not informed with details about the full scope of the changes in the Department's operation of Ballona Creek was premised on a final

¹ "Feasibility" is defined (https://en.wikipedia.org/wiki/Feasibility_study) as follows: "A feasibility study is an assessment of the practicality of a project or system. A feasibility study aims to objectively and rationally uncover the strengths and weaknesses of an existing business or proposed venture, opportunities and threats present in the [natural environment](#), the [resources](#) required to carry through, and ultimately the prospects for success."^{[1][2][3]} In its simplest terms, the two criteria to judge feasibility are [cost](#) required and [value](#) to be attained.^[4]

² Including but not limited to: moving the garbage to a location where there is considerable sea life from a location where the water is far shallower, less cleansed and refreshed by new ocean water, and therefore consisting of more toxic urban runoff and therefore little or no marine life; allowing the garbage to pass the Wetlands, sometimes more than once due to tidal action during non-storm periods; the commitment to a reliance on a lot of stormwater necessary to drive the garbage to the Interceptor in the first instance which is inconsistent with the County's commitment to recovery and recycling stormwater; the likely removal of the current boom system in order to actually test the efficacy of the Interceptor; the spoilation of an important recreational resource and aesthetics; among others.

agreement to be presented to the Board as it is being presented now, as opposed to a broad and general authorization on November 5th 2019 to consider feasibility. Indeed, the Board could easily have been confused by the Department presenting the Interceptor project as only in its “feasibility” stage based on the stated reason for the exemption from CEQA.

A related matter is that the form of the “contract” presented to the Board left open the performance measures to determine the efficacy of the Interceptor. Petitioners learned on March 31, 2022, that the “agreed upon” performance criteria could possibly allow for a worsening of the current efforts to clean Ballona Creek. If that is the case, then this too would constitute a physical change in the environment that would only be “approved” based on the County’s approval of the Interceptor on April 5, 2022. But to date, there is no data in the record to demonstrate that the Interceptor will improve upon the Department’s current system of removing garbage from Ballona Creek.

The Department further hedges its position voiding a “defined course of action” claiming that the 2-year deployment itself does not itself constitute a commitment to a defined course of action. County claims it is merely a “pilot program.” County’s stated position is that only after collecting data on the Interceptor, will the Board then consider a “defined course of action” regarding the Interceptor and the wider picture of the cleanup of Ballona Creek including the termination of the Alla Road Program as a permanent solution. Additional proof of Petitioners’ contention is found in the language of an exemption for a feasibility study itself i.e.: a project “. . . . which the Los Angeles County Board of Supervisors has not approved, adopted, or funded after having considered environmental factors.” (Emphasis added.) By these words, it is arguable that the County has not yet “approved” the Interceptor project. That interpretation is reinforced by the matters sought for approval on April 5, 2022.

This claim as much as admits the fact that County’s primary function for the Interceptor is to collect and remove garbage out of Ballona Creek. The exemption relied on by the County states in plain language “. . . these may be strictly for information gathering purposes.” (Emphasis added.) This statement gives an example that only the equivalent of “strictly for information gathering” are allowed. It provides some guidance of the legislative intent behind the exemption. The collection of data is no more than the Interceptor’s secondary function to determine the efficacy of its primary function - gathering up the garbage. If the intent was to allow pilot programs, then “strictly for information gathering. . .” would not be an example of the scope of what may be exempted. Perhaps an exemption would have been provided for test programs or pilot projects notwithstanding actual physical impacts. It cannot reasonably be argued that a 2-year garbage collection device is the equivalent of strictly for information gathering.”

It also ignores the plain fact that the changes to the physical environment that will occur with the initial introduction of the Interceptor, will already have occurred, if in two years, the County decides that it wishes to continue the “pilot project” and make it a permanent project.

County has stated that its objective in collecting the data is to make the Interceptor

permanent. County promises to do a full environmental consideration at that time. But the rules of consideration of a project that is two years old are completely different from considering the impacts on the environment prior to deployment.

These distinctions and promises are disingenuous and will not achieve the goal of maximum protection of the environment or full disclosure of environmental decisions or transparent decision making regarding the environment. Authorizing two years of operation before requiring full environmental review also does not meet the CEQA requirements of the earliest reasonable consideration of environmental impacts.

Choosing to do an environmental analysis is another way to measure whether an “approval” has occurred. Here the Department has deemed it too early to adopt or study any definite course of action under CEQA. They state that is two years in the future. This inaction is consistent with the absence of any “approval” on November 5, 2019. It seems the County deemed it too early to do any CEQA analysis of this topic.

Up until now, the Board has not committed to a “definite course of action.” This the Department seeks to rectify by requesting funding and formal approval of the Interceptor on April 5, 2022. The contrast between the current funding request, supported by over 600 pages of documentation, with the prior authorization request, supported by nothing, is stark and revealing. The requested approval on April 5, 2022, seeks to implement the Interceptor, apparently something the Department has determined has not yet occurred. The amount and quality of the documentation itself supports the conclusion that the November 5, 2019 action was preliminary at best. Therefore, the requested action constitutes County’s first clearly defined course of action and therefore an approval as defined by CEQA.

The Department’s April 5, 2022, Board letter submitted in support of the Interceptor muddies the water regarding the Board’s previous consideration of the matter of cleaning Ballona Creek and the Interceptor and mischaracterizes the Board’s previous action. That letter states that the Board previously approved the “project” referring to the Interceptor. As shown above, the Board’s prior action did not constitute an “approval” under CEQA. But equally important, the Board was not requested to approve the Interceptor nor was it presented with data to allow it to consider approval. Thus, the Department has misleadingly enlarged the scope of the Board’s prior consideration of the Interceptor as a calculated means to ask the Board to ratify now what has not previously occurred.

THE ENVIRONMENTAL ANALYSIS SET FORTH IN THE MARCH 8, 2021 AND IN THE MARCH 22, 2022 DO NOT MEET THE REQUIREMENTS OF CEQA

Approximately 1 ½ years after the November 5, 2019 NOE, the Department prepared an internal analysis, dated March 8, 2021 (“Second NOE.”) One additional year later, by a document dated March 22, 2022, described as an Environmental Evaluation (“Environmental Evaluation”), the Department prepared a second analysis related to the Interceptor. Petitioners are informed and believe the County will contend that these two documents constitute a

supplement to the November 5, 2019 NOE which they deemed to be necessary to achieve legal adequacy under CEQA. All of the many reasons already stated by the undersigned in the March 22, 2022 letter are incorporated herein and are in addition to those new arguments made herein to contend that the November 5, 2019 NOE notwithstanding the Second NOE and the Environmental Evaluation remain legally inadequate under CEQA.

There are publication issues regarding compliance with CEQA with all three of these versions of the environmental documentation that County has relied on. The Petitioners are informed and believe that critical supporting documentation of the November 5, 2019 NOE was never posted with the County Clerk or OPR. The Petitioners are informed and believe that no part of the Second NOE was ever posted with the County Clerk or OPR. These failures disqualify both of these documents as notice under CEQA.

The Second NOE centered around new Cultural Resources Report, a Biological Assessment, Biological Resources Technical Report (BRTR) which included a Marine Biological Study, an Essential Fish Habitat Assessment (EFHA), and Jurisdictional Delineation prepared on or about the spring and summer of 2020. The significant defect in these studies is the extremely narrowly defined geographic area subject to the investigation, particularly those related to biological impacts and the limitation that the scope pertained to the construction of the moorings on the jetty. Petitioner has no comment on the adequacy of the geographic scope related to the other permits the County sought, but with respect to CEQA, they are improperly truncated and therefore do not comply.

CEQA requires a broad examination of the biological circumstances of a project. A “project” is defined as the whole of the action. The examination of the moorings fails to consider these foreseeable aspects of the project. The scope of the studies pertained to only the construction of the moorings within the rock jetties that define the Creek and the floating Interceptor. There was no effort to consider upstream impacts caused by tidal action or downstream impacts caused by both tidal action and the flow of water through the restrained garbage. This should have included the physical changes to the environment for: any removal, temporary or otherwise, of one or more booms; the shifting of garbage to deeper waters where there is known and observable intense aquatic and aquatic related life; the allowance of garbage to sit in the water longer and where there is significant biotic resources; the spread of the garbage by tidal action including possibly to and into the Wetlands; the effect of garbage being left high and dry in sensitive areas due to tidal action; among other things. CEQA requires all of the area that has the potential to be impacted to be included in the study.

Nevertheless, even within these geographically limited studies, there is language that constitutes substantial evidence of the potential for a significant environmental that for CEQA purposes requires the preparation of environmental document beyond an NOE including an Initial Study, which then must be circulated for public comment. For one, even the artificially truncated study nevertheless found that the following species may forage and migrate through and immediately adjacent to the action area:

Two butterfly species, the El Segundo blue butterfly (Euphilotes battoides

allyni) (federally endangered (FE)), and the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) (FE), have a potential to be present within the action area. Five bird species have a potential to be present within the action area: the western snowy plover (*Charadrius alexandrinus nivosus*) (federally threatened (FT)), southwestern willow flycatcher (*Empidonax traillii extimus*) (FE), coastal California gnatcatcher (*Poliophtila californica californica*) (FT), California least tern (*Sternula antillarum browni*) (FE), and least Bell's vireo (*Vireo bellii pusillus*) (FE).³

Based on the artificially limited geographic scope it is not known whether there is a potential for a greater or more likely impact on these species when the whole of the project area is examined. The limited geographic scope comes more significantly into play because limiting the scope to the jetties means there is no reliable statement that the whole impact of the project is not within or adjacent to proposed or designated critical habitat for any of the potential species. Because of the passing garbage and the wind and tides that will move the garbage at the Interceptor to the Wetlands, compliance with CEQA requires an examination of the entire watershed area to ascertain the full impact of delaying the retrieval of garbage to the mouth of Ballona Creek.

Furthermore, the Environmental Evaluation stated that it was requiring “. . . *Avoidance and minimization measures (AMMs)*” have been incorporated into the project to protect water quality, minimize fugitive dust emissions, prevent the introduction of invasive plant species and protect special-status wildlife. The determination by an expert of the need for mitigation is conclusive evidence of the identification of a significant environmental impacts that needed to be reduced or eliminated. Based on this statement, which constitutes an admission by an expert, CEQA requires the public circulation and comment period on a mitigated negative declaration at a minimum, if not a full environmental impact report.

The Environmental Evaluation goes on in this same vein identifying additional significant impacts as follows:

In addition, species-specific AMMs have been identified to avoid adverse effects on the El Segundo blue butterfly, Palos Verdes blue butterfly, western snowy plover, southwestern willow flycatcher, coastal California gnatcatcher, California least tern, and least Bell's vireo. With implementation of the AMMs, the project would have the following determinations: • may affect, but is not likely to adversely affect the El Segundo blue butterfly; • may affect, but is not likely to adversely affect the Palos Verdes blue butterfly; • may affect, but is not likely to adversely affect the western snowy plover; • may affect, but is not likely to adversely affect the southwestern willow flycatcher; • may affect, but is not likely to adversely affect the coastal California gnatcatcher; • may affect, but is not likely to adversely affect the California least tern; and • may affect, but is not likely to adversely affect the least Bell's vireo. (Id.)

³ Stantec Biological Assessment, October 19, 2020, pages 3-4 out of 93

The identification of the potential for significant impacts requiring mitigation by an expert is additional support that triggers the right of the public to review and comment on the environmental issues and their proposed mitigation. This is how CEQA requires the County to fulfill the disclosure and transparency obligations. Here it seems the County has taken an attitude of “trust us.” That is not allowed under CEQA.

There is additional evidence of possible impact when the expanded study goes beyond the 120-acre “*action area*” (including a parking lot for assembly) and is replaced with an accurate geographic area, expanded to include the whole area affected by the changes, direct and indirect. That additional evidence is raised by the following observation:

*Although the action area overlaps suitable habitat for the following special-status plant species: marsh sandwort (*Arenaria paludicola*) (FE), Ventura Marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*) (FE), salt marsh bird’s-beak (*Chloropyron maritimum* ssp. *maritimum*) (FE), San Fernando Valley spineflower (*Chorizanthe parryi* var. *fernandina*) (FC), San Diego button-celery (*Eryngium aristulatum* var. *parishii*) (FE), and Gambel’s water-cress (*Nasturtium gambelii*) (FE), the project would not result in disturbance to any habitat for these plant species. (Emphasis added.) (Id.)*

Recall that the scope, called the “action area”⁴ consists of a parking lot, the portions of the jetty on both sides of the Ballona Creek where 6 moorings will be built, and the water between these jetties to the bottom of the channel where it is intended the Interceptor will float plus a 500-foot radius. Whereas the actual geographic area impacted will include habitat types identified by the environmental consultant as adjacent to the limited zone called “the action area” which will include: aquatic and mudflat habitats, tidal salt marsh, non-tidal wetland, unvegetated salt pan, and brackish marsh habitat. Because the Biological Assessment does not include the upstream portions of the Creek that will be impacted by moving the collection of garbage to the mouth of the Creek the Biological Assessment finds that “. . . *there is a lack of such habitats with the exception of the aquatic habitat within the action area . . .*”. In fact, all areas will begin at the mouth of Ballona Creek where it empties passed the rock breakwater and reaches those parts of the Creek affected by high tides, including windblown exacerbation of that force all the way to the most upstream boom, including at least a part of the Wetlands, will comprise the affected area. It cannot be presumed that the limited geographic area referenced here will yield the same conclusions when the whole area physically affected is considered. An Initial Study of the total area affected is required.

The Environmental Evaluation includes a new assessment of the potential for adverse

⁴ “Action area” is not a CEQA term and may not be relevant regarding compliance with CEQA. Here” the ‘action area’ encompasses approximately 102 acres and includes the proposed location of the InterceptorTM and its components, staging area, and construction-related access routes.” (Id.)

impacts caused by vectors, i.e., birds and rats, which had not been done previous to March 2022. This study was added to address concerns that the Interceptor's capture of trash would undoubtedly attract birds and other vectors, which could affect the existing quality of the area. Because this vector analysis took place in 2022 it was not part of the Second NOE. But like the Second NOE, it has not been properly circulated for public comment. No notice of it has been provided and it was provided to the public for the first time on March 31, 2 business days prior to the consideration of it by the Board.

The Environmental Evaluation also found the potential for significant environmental impacts due to the identified vectors that required the implementation of “. . . *operations and maintenance activities and preventative controls outlined in the Pilot Project's Operations, Maintenance, Repair, Rehabilitation, and Replacement Plan (OMRRR Plan)*” Just as with the identified AAMs, the acknowledgement that these “*preventative controls*” are necessary to mitigate project impacts, conclusively establishes the existence of significant impacts that require that triggers full compliance with the procedural requirements of CEQA. Based on this proof, at a minimum CEQA requires notice to all persons affected, public circulation and an opportunity to comment on the appropriate level of environmental review, i.e., a mitigated negative declaration if not a full environmental impact report.

The OMRRR Plan was not provided in the materials supporting the Board's consideration of this agenda item. CEQA requires that the public be provided all of the supporting materials so that their participation is fully informed. If, as it appears, the OMRRR Plan is not included in the materials submitted to the Board for its review, then a material element of what the Board must consider is missing and the Board cannot be expected to make a fully informed decision. CEQA is designed to ensure that both the public and the decision makers are fully informed about all aspects of the environmental impacts of the project.

These procedural failures do not comply with CEQA policies which require full participation by the public including the opportunity to comment on the study. But more importantly, County has been pretending to be working with neighboring residents since the middle of 2021, and yet, no notice of any kind of this study was provided to them. It is not unreasonable to conclude that the County did not want this issue to surface and that this is evidence of that intent which is antithetical to the requirements of CEQA.

At a minimum, before giving this matter any further consideration, the Board should require the Department to prepare an Initial Study, supported by studies of the entire geographic area affected by each and every aspect of the Project, with consideration given to direct, indirect, and reasonably foreseeable future impacts of the implementation of the Interceptor for 2 years, which is the stated intent of the Department. Based on the Initial Study, the appropriate environmental document must be prepared and made available for public comment and the Department must provide legally adequate responses. Only then may County proceed with consideration of the Interceptor.

Why is this important? The County is being asked to fund at least \$4.7 million on a

project that might not be necessary, that the Department has admitted will suspend or even replace what could be an environmentally better solution, whether it be the existing 3-boom system or the Alla Road Program the Department identified 3 years ago as the permanent solution. Without complete information, one of the primary objectives of CEQA cannot be met - the public is entitled to know the environmental values of their decision makers.

On November 5, 2019, the Board authorized the Department to enter into a contract which was subsequently modified by the addition of Exhibit C, *Minimum Performance Criteria*. (See Exhibit C, *Minimum Performance Criteria*, attached hereto.) In other words, the Board authorized the Department to enter into an agreement with TOC, before it was determined, among other key missing elements, how performance of the Interceptor would be measured. Exhibit C, *Minimum Performance Criteria*, provides that the Department will accept a level of performance as follows:

The Interceptor captures at least 50 percent of the plastics and other trash that reach the Interceptor as estimated based on monitoring data gathered during the pilot project

However, this critically important piece of information is missing from the materials the Department has submitted for the Board to decide whether to fund and allow the Interceptor project to proceed. The Department is now asking the Board to ratify a 2-year “pilot” period of operation of the Interceptor blind to the acceptable level of efficacy of the program the Department wishes to begin.

The Department’s environmental consultant stated that the move of the Interceptor from well upstream of the Pacific Avenue Bridge to well below it had the potential to impact aesthetics as follows:

Impacts to aesthetics could include degrading existing character or quality of the site or its surroundings or adverse effects on a scenic vista.

Petitioners have already raised this concern in their March 22, 2022 letter. Here, they wish to highlight the acknowledgement of this impact by the Department’s own environmental consultant. Changes were made to address the identified light and glare impacts. But the supporting materials contain no mitigation of the adverse aesthetic impacts on the thousands of recreational users of the Pacific Avenue Bridge walking and biking path, fisherman, beach goers on any given weekend and holiday who will not be able to avoid looking at tons of garbage during and after a storm event and at least some amount of windblown and tidal driven garbage caused by urban run-off during intervening periods.

On the topic of the adverse impact on aesthetics caused by the interception of the garbage at the mouth of the Ballona Creek as opposed to upstream where it is collected now, there seems to be a faulty assumption that the garbage will quickly be whisked into the Interceptor’s bins upon arrival at the Interceptor’s booms and safely stored there until the bins are full. This faulty assumption fails to take into account the winds, that normally blow upstream, and the tides,

which will reverse the flow of water 50% of every day, plus and the combination of these two forces. Unstudied in any of the materials provided by the Department is the likelihood that garbage will be moved away from the Interceptor's conveyor belt by each and by both of these two forces together during storm events and under regular weather conditions. The effect of these events will be the likelihood for unspecified amounts of floating garbage, particularly high profile garbage such as plastic bags, floating towards, and under the Pacific Avenue Bridge. No consideration has been given to the aesthetic impact of lingering garbage that will result from the combination of these omnipresent and unyielding natural forces.

Based on the identified foreseeable potential adverse aesthetic impacts, the record contains substantial evidence of a variety of unmitigated environmental impacts on the aesthetics of the project which triggers the requirement that the Department conduct an environmental impact report ("EIR") that complies with all of the applicable CEQA substantive and procedural requirements prior to any approval of the Interceptor. CEQA prohibits an agency from approving a project that adversely impacts the environment without properly considering the means to mitigate or otherwise avoid them wherever feasibly such as the consideration of alternatives.

RATIFICATION OF THE NOVEMBER 15, 2019 AGREEMENT BETWEEN THE DISTRICT AND TOC WITHOUT ANY RECORD EVIDENCE THAT THE RESULT WILL BE THE RETRIEVAL OF MORE GARBAGE THAN IS PRESENTLY RECOVERED AND/OR CLEANER WATER CONSTITUTES A VIOLATION OF CEQA

The record does not confirm that the Board has ever been apprised of the Department's negotiated agreement to accept the Interceptor's performance based on collection of only 50% of the garbage that reaches the Interceptor. Nor does the record show what level of success the Department's current 3-boom system achieves. In other words, there is no evidence in the record of whether the deployment of the Interceptor will better or worsen the impact the garbage has on the environment. What is certain is that delaying the interception of garbage until it reaches the mouth of Ballona Creek constitutes a change in the environment. CEQA decisions must be based on data, on facts, on science, and on admissible evidence, not on guess or speculation. Here there is no facts or data regarding the most important aspect of the proposed project.

Indeed, nothing has been shown to the public since the Department instituted its enhanced boom technology, and increased the number of booms, and the placement of them up stream. These intervening improvements require an analysis to demonstrate there is a continuing need for the Interceptor prior to its approval. The County is duty bound to make a good faith effort to ascertain all facts that are relevant to its decisions before considering and approving any proposed action. Based on this record, the County cannot approve the Interceptor because it has no facts on which to conclude whether its decision will improve or worsen the environment.

CONCLUSION

It is only now, for the first time, by the Department's request for funds, for an implementation construction contract, a ratification of the November 15, 2019 agreement

between the District and TOC which now provides for an acceptable minimum efficacy of the Interceptor at only 50% (albeit not yet disclosed to the Board), and adoption of 600+ pages of uncirculated environmental review as compliance with CEQA that the Board is being asked to adopt a defined course of action, and therefore an “approval” of the Interceptor defined in CEQA. The proposed actions based on these requests requires full CEQA compliance. As outlined above and in Petitioner’s earlier letter, this has not occurred.

For all of the reasons set forth in the undersigned’s March 22, 2022 letter and this letter to the Board, Petitioners respectfully request that the Board not take any action on the Interceptor project on April 5, 2022, and instead send it back to the Department with instructions to fully comply with CEQA.

I appreciate the opportunity to have addressed this matter.

Respectfully submitted,

Corin L. Kahn

cc:
Supervisors

County Counsel	Lauren Dods: ldods@counsel.lacounty.gov Laura Jacobson: ljacobson@counsel.lacounty.gov Mark Yanai: myanai@counsel.lacounty.gov
Public Works clients	Cung Nguyen CUNGUYEN@dpw.lacounty.gov

CORIN L. KAHN

ATTORNEY AT LAW

401 WILSHIRE BOULEVARD, 12th Floor
SANTA MONICA, CALIFORNIA, 90401

TELEPHONE: (424) 252-4714

WRITER'S E-MAIL:
CLKESQ@OUTLOOK.COM

OUR FILE NUMBER:

April 1, 2022

VIA eMail Only

executiveoffice@bos.lacounty.gov

Los Angeles County Board of Supervisors
Hall of Administration
500 West Temple Street, Room 383
Los Angeles, CA 90012

**Re: SUPPLEMENTAL OPPOSITION LETTER TO PROPOSED BALLONA
CREEK INTERCEPTOR PROJECT; AGENDA ITEM #54; APRIL 5, 2022**

Dear Honorable Members of the Board of Supervisors:

This letter is an attempt to supplement a lengthy and detailed letter sent to the Executive Office, each Supervisor and to the Department of Public Works dated March 22, 2022, outlining many reasons the Interceptor project is a bad idea environmentally, as a policy, and many examples of how its processing is inconsistent with the California Environmental Quality Act ("CEQA"). This supplement is an additional effort to cause the County to re-examine all aspects of the Interceptor before committing resources to its implementation. All of the material previously submitted is incorporated into this letter by this reference.

INTRODUCTION

Petitioners herein and by their letter dated March 22, 2022, intend to raise many different arguments against the Interceptor. Some of them may seem inconsistent in that they respond to an assortment of possible legal positions the County may take in support of the Interceptor if County decides to move forward with approving it on April 5, 2022. By this letter, Petitioners seek to supplement their opposition to the Department's intentions to proceed with the Interceptor based on policy and environmental grounds as set forth in these two letters.

THE BOARD'S VOTE ON APRIL 5, 2019, WAS NOT AN "APPROVAL" UNDER CEQA

The Department of Public Works ("Department") has taken the position that they have complied with CEQA by the Board's adoption of the Department's November 5, 2019 Notice of Exemption ("NOE") that occurred along with the vote on that same date to authorize the Department to enter into a contract to accept, deploy, operate and maintain the Interceptor.

Petitioner denies that the November 5, 2019 NOE complies with CEQA for the many reasons set forth in its earlier letter and as supplemented here. In particular, Petitioners contend that to date, the County has not taken any “action,” defined in CEQA and therefore the November 5, 2019 NOE cannot constitute compliance with CEQA. Petitioners contend that the first “approval” as defined by CEQA related to implementation of the Interceptor project is currently scheduled for April 5, 2022.

First, the filter for considering the County’s development of a defined course of action begins with the directive adopted by the Board in its March 2019 Motion that the Department develop a multi-year and multi-agency plan to enhance the on-going efforts to clean Ballona Creek. In response, the Department produced a report dated June 15, 2019, and a Plan dated October 1, 2019, both of which defined the Department’s recommended course of action. The Interceptor was not a part of either of those reports.

The June 15, 2019 report and October 1, 2019 Plan were submitted to each of the Supervisors individually. Petitioner is unaware of any action taken by the Board to move forward with anything related to the directive stated in their March 2019 Motion. Indeed, Petition is informed and believes that the matter seeking approval of the Interceptor on April 5, 2022, constitutes the Board’s first approval of anything to advance the subject matter of its March 2019 Motion. This would constitute a defined course of action that meets the definition of an “approval” under CEQA which approval itself must fully comply with CEQA.

In November 2019, The Interceptor was not presented as a defined course of action. There was no linkage made between the Interceptor and the Board’s March 2019 Motion or the two reports prepared by the Department to meet the directive of the Board in that motion. There was no supporting report discussing the Interceptor in comparison with the alternatives that the Department had given careful thought to prior to presentation to each Supervisor. Little or no detail about the scope of the deployment was presented to the Board in connection with the November 5, 2019 authorization vote. As the Interceptor was not presented as a defined course of action, it was not voted on as a defined course of action. For these reasons, it cannot credibly be argued that the November 5, 2019 constituted an approval of the Interceptor that required CEQA approval. To the extent County contends that Petitioners’ opposition to the Interceptor is barred by the passage of time since the November 5, 2019 NOE, Petitioners contend that document was a nullity on the date of its approval and only becomes relevant to the extent it is adopted or incorporated into the action the County is being requested to take on April 5, 2022.

This would render void the November 5, 2019 NOE as not linked to an “approval” defined under CEQA. Only by the Board’s ratification on April 5, 2022, of the November 5, 2019 NOE will that document become relevant to the County’s CEQA process. Nothing in that ratification would change the arguments previously made by Petitioners in their March 22, 2002 letter to the Board that the November 5, 2019 NOE does not comply with CEQA.

Sometime in 2020, the Department implemented improved boom technology, and increased the number of booms to three and moved the early collection of garbage considerably

upstream from where it originally was, all of which was described in both the June 15th and the October 1st reports to the Supervisors. This was simply an enhancement and enlargement of the County's exiting system to catch and remove the garbage from the Ballona Creek. The County has provided figures that demonstrate that this effort was working reasonably well before these enhancements. The intervening implementation of an alternative to the Interceptor, which has the potential to render it redundant, confirms that the County had not yet adopted the Interceptor as a defined course of action.

Over the ensuing 30 months since the November 5th 2019 vote, the Department and TOC sought to find out if their idea was feasible.¹ This is confirmed by the Department's own choice of CEQA Guidelines Sections to exempt from CEQA the study of the feasibility of the Interceptor. Deploying the Interceptor to retrieve the garbage out of the Ballona Creek cannot reasonably be argued to be the equivalent of a feasibility study.

Operating the Interceptor would consist of actual changes in the physical environment, including those direct and indirect changes described in the letter this supplements². Because a study of feasibility is not the equivalent of operating a 2-year pilot which will result in physical changes, they are treated differently under CEQA. The Department's April 5, 2022 request that the County authorize funds, a construction contract, and ratify the efficacy measures of the agreement with TOC, necessary to allow for operation of the Interceptor, is not exempt as a feasibility study under CEQA.

Senior members of the Department told Petitioners that County can back out of the Interceptor project at any time. That constitutes further evidence that the Department never considered deployment of the Interceptor as a defined course of action. It can be assumed that the Board's November 5, 2019 authorization vote that was not informed with details about the full scope of the changes in the Department's operation of Ballona Creek was premised on a final

¹ "Feasibility" is defined (https://en.wikipedia.org/wiki/Feasibility_study) as follows: "A feasibility study is an assessment of the practicality of a project or system. A feasibility study aims to objectively and rationally uncover the strengths and weaknesses of an existing business or proposed venture, opportunities and threats present in the [natural environment](#), the [resources](#) required to carry through, and ultimately the prospects for success."^{[1][2][3]} In its simplest terms, the two criteria to judge feasibility are [cost](#) required and [value](#) to be attained.^[4]

² Including but not limited to: moving the garbage to a location where there is considerable sea life from a location where the water is far shallower, less cleansed and refreshed by new ocean water, and therefore consisting of more toxic urban runoff and therefore little or no marine life; allowing the garbage to pass the Wetlands, sometimes more than once due to tidal action during non-storm periods; the commitment to a reliance on a lot of stormwater necessary to drive the garbage to the Interceptor in the first instance which is inconsistent with the County's commitment to recovery and recycling stormwater; the likely removal of the current boom system in order to actually test the efficacy of the Interceptor; the spoilation of an important recreational resource and aesthetics; among others.

agreement to be presented to the Board as it is being presented now, as opposed to a broad and general authorization on November 5th 2019 to consider feasibility. Indeed, the Board could easily have been confused by the Department presenting the Interceptor project as only in its “feasibility” stage based on the stated reason for the exemption from CEQA.

A related matter is that the form of the “contract” presented to the Board left open the performance measures to determine the efficacy of the Interceptor. Petitioners learned on March 31, 2022, that the “agreed upon” performance criteria could possibly allow for a worsening of the current efforts to clean Ballona Creek. If that is the case, then this too would constitute a physical change in the environment that would only be “approved” based on the County’s approval of the Interceptor on April 5, 2022. But to date, there is no data in the record to demonstrate that the Interceptor will improve upon the Department’s current system of removing garbage from Ballona Creek.

The Department further hedges its position voiding a “defined course of action” claiming that the 2-year deployment itself does not itself constitute a commitment to a defined course of action. County claims it is merely a “pilot program.” County’s stated position is that only after collecting data on the Interceptor, will the Board then consider a “defined course of action” regarding the Interceptor and the wider picture of the cleanup of Ballona Creek including the termination of the Alla Road Program as a permanent solution. Additional proof of Petitioners’ contention is found in the language of an exemption for a feasibility study itself i.e.: a project “. . . . which the Los Angeles County Board of Supervisors has not approved, adopted, or funded after having considered environmental factors.” (Emphasis added.) By these words, it is arguable that the County has not yet “approved” the Interceptor project. That interpretation is reinforced by the matters sought for approval on April 5, 2022.

This claim as much as admits the fact that County’s primary function for the Interceptor is to collect and remove garbage out of Ballona Creek. The exemption relied on by the County states in plain language “. . . these may be strictly for information gathering purposes.” (Emphasis added.) This statement gives an example that only the equivalent of “strictly for information gathering” are allowed. It provides some guidance of the legislative intent behind the exemption. The collection of data is no more than the Interceptor’s secondary function to determine the efficacy of its primary function - gathering up the garbage. If the intent was to allow pilot programs, then “strictly for information gathering. . .” would not be an example of the scope of what may be exempted. Perhaps an exemption would have been provided for test programs or pilot projects notwithstanding actual physical impacts. It cannot reasonably be argued that a 2-year garbage collection device is the equivalent of strictly for information gathering.”

It also ignores the plain fact that the changes to the physical environment that will occur with the initial introduction of the Interceptor, will already have occurred, if in two years, the County decides that it wishes to continue the “pilot project” and make it a permanent project.

County has stated that its objective in collecting the data is to make the Interceptor

permanent. County promises to do a full environmental consideration at that time. But the rules of consideration of a project that is two years old are completely different from considering the impacts on the environment prior to deployment.

These distinctions and promises are disingenuous and will not achieve the goal of maximum protection of the environment or full disclosure of environmental decisions or transparent decision making regarding the environment. Authorizing two years of operation before requiring full environmental review also does not meet the CEQA requirements of the earliest reasonable consideration of environmental impacts.

Choosing to do an environmental analysis is another way to measure whether an “approval” has occurred. Here the Department has deemed it too early to adopt or study any definite course of action under CEQA. They state that is two years in the future. This inaction is consistent with the absence of any “approval” on November 5, 2019. It seems the County deemed it too early to do any CEQA analysis of this topic.

Up until now, the Board has not committed to a “definite course of action.” This the Department seeks to rectify by requesting funding and formal approval of the Interceptor on April 5, 2022. The contrast between the current funding request, supported by over 600 pages of documentation, with the prior authorization request, supported by nothing, is stark and revealing. The requested approval on April 5, 2022, seeks to implement the Interceptor, apparently something the Department has determined has not yet occurred. The amount and quality of the documentation itself supports the conclusion that the November 5, 2019 action was preliminary at best. Therefore, the requested action constitutes County’s first clearly defined course of action and therefore an approval as defined by CEQA.

The Department’s April 5, 2022, Board letter submitted in support of the Interceptor muddies the water regarding the Board’s previous consideration of the matter of cleaning Ballona Creek and the Interceptor and mischaracterizes the Board’s previous action. That letter states that the Board previously approved the “project” referring to the Interceptor. As shown above, the Board’s prior action did not constitute an “approval” under CEQA. But equally important, the Board was not requested to approve the Interceptor nor was it presented with data to allow it to consider approval. Thus, the Department has misleadingly enlarged the scope of the Board’s prior consideration of the Interceptor as a calculated means to ask the Board to ratify now what has not previously occurred.

THE ENVIRONMENTAL ANALYSIS SET FORTH IN THE MARCH 8, 2021 AND IN THE MARCH 22, 2022 DO NOT MEET THE REQUIREMENTS OF CEQA

Approximately 1 ½ years after the November 5, 2019 NOE, the Department prepared an internal analysis, dated March 8, 2021 (“Second NOE.”) One additional year later, by a document dated March 22, 2022, described as an Environmental Evaluation (“Environmental Evaluation”), the Department prepared a second analysis related to the Interceptor. Petitioners are informed and believe the County will contend that these two documents constitute a

supplement to the November 5, 2019 NOE which they deemed to be necessary to achieve legal adequacy under CEQA. All of the many reasons already stated by the undersigned in the March 22, 2022 letter are incorporated herein and are in addition to those new arguments made herein to contend that the November 5, 2019 NOE notwithstanding the Second NOE and the Environmental Evaluation remain legally inadequate under CEQA.

There are publication issues regarding compliance with CEQA with all three of these versions of the environmental documentation that County has relied on. The Petitioners are informed and believe that critical supporting documentation of the November 5, 2019 NOE was never posted with the County Clerk or OPR. The Petitioners are informed and believe that no part of the Second NOE was ever posted with the County Clerk or OPR. These failures disqualify both of these documents as notice under CEQA.

The Second NOE centered around new Cultural Resources Report, a Biological Assessment, Biological Resources Technical Report (BRTR) which included a Marine Biological Study, an Essential Fish Habitat Assessment (EFHA), and Jurisdictional Delineation prepared on or about the spring and summer of 2020. The significant defect in these studies is the extremely narrowly defined geographic area subject to the investigation, particularly those related to biological impacts and the limitation that the scope pertained to the construction of the moorings on the jetty. Petitioner has no comment on the adequacy of the geographic scope related to the other permits the County sought, but with respect to CEQA, they are improperly truncated and therefore do not comply.

CEQA requires a broad examination of the biological circumstances of a project. A “project” is defined as the whole of the action. The examination of the moorings fails to consider these foreseeable aspects of the project. The scope of the studies pertained to only the construction of the moorings within the rock jetties that define the Creek and the floating Interceptor. There was no effort to consider upstream impacts caused by tidal action or downstream impacts caused by both tidal action and the flow of water through the restrained garbage. This should have included the physical changes to the environment for: any removal, temporary or otherwise, of one or more booms; the shifting of garbage to deeper waters where there is known and observable intense aquatic and aquatic related life; the allowance of garbage to sit in the water longer and where there is significant biotic resources; the spread of the garbage by tidal action including possibly to and into the Wetlands; the effect of garbage being left high and dry in sensitive areas due to tidal action; among other things. CEQA requires all of the area that has the potential to be impacted to be included in the study.

Nevertheless, even within these geographically limited studies, there is language that constitutes substantial evidence of the potential for a significant environmental that for CEQA purposes requires the preparation of environmental document beyond an NOE including an Initial Study, which then must be circulated for public comment. For one, even the artificially truncated study nevertheless found that the following species may forage and migrate through and immediately adjacent to the action area:

Two butterfly species, the El Segundo blue butterfly (Euphilotes battoides

allyni) (federally endangered (FE)), and the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) (FE), have a potential to be present within the action area. Five bird species have a potential to be present within the action area: the western snowy plover (*Charadrius alexandrinus nivosus*) (federally threatened (FT)), southwestern willow flycatcher (*Empidonax traillii extimus*) (FE), coastal California gnatcatcher (*Poliophtila californica californica*) (FT), California least tern (*Sternula antillarum browni*) (FE), and least Bell's vireo (*Vireo bellii pusillus*) (FE).³

Based on the artificially limited geographic scope it is not known whether there is a potential for a greater or more likely impact on these species when the whole of the project area is examined. The limited geographic scope comes more significantly into play because limiting the scope to the jetties means there is no reliable statement that the whole impact of the project is not within or adjacent to proposed or designated critical habitat for any of the potential species. Because of the passing garbage and the wind and tides that will move the garbage at the Interceptor to the Wetlands, compliance with CEQA requires an examination of the entire watershed area to ascertain the full impact of delaying the retrieval of garbage to the mouth of Ballona Creek.

Furthermore, the Environmental Evaluation stated that it was requiring “. . . *Avoidance and minimization measures (AMMs)*” have been incorporated into the project to protect water quality, minimize fugitive dust emissions, prevent the introduction of invasive plant species and protect special-status wildlife. The determination by an expert of the need for mitigation is conclusive evidence of the identification of a significant environmental impacts that needed to be reduced or eliminated. Based on this statement, which constitutes an admission by an expert, CEQA requires the public circulation and comment period on a mitigated negative declaration at a minimum, if not a full environmental impact report.

The Environmental Evaluation goes on in this same vein identifying additional significant impacts as follows:

In addition, species-specific AMMs have been identified to avoid adverse effects on the El Segundo blue butterfly, Palos Verdes blue butterfly, western snowy plover, southwestern willow flycatcher, coastal California gnatcatcher, California least tern, and least Bell's vireo. With implementation of the AMMs, the project would have the following determinations: • may affect, but is not likely to adversely affect the El Segundo blue butterfly; • may affect, but is not likely to adversely affect the Palos Verdes blue butterfly; • may affect, but is not likely to adversely affect the western snowy plover; • may affect, but is not likely to adversely affect the southwestern willow flycatcher; • may affect, but is not likely to adversely affect the coastal California gnatcatcher; • may affect, but is not likely to adversely affect the California least tern; and • may affect, but is not likely to adversely affect the least Bell's vireo. (Id.)

³ Stantec Biological Assessment, October 19, 2020, pages 3-4 out of 93

The identification of the potential for significant impacts requiring mitigation by an expert is additional support that triggers the right of the public to review and comment on the environmental issues and their proposed mitigation. This is how CEQA requires the County to fulfill the disclosure and transparency obligations. Here it seems the County has taken an attitude of “trust us.” That is not allowed under CEQA.

There is additional evidence of possible impact when the expanded study goes beyond the 120-acre “*action area*” (including a parking lot for assembly) and is replaced with an accurate geographic area, expanded to include the whole area affected by the changes, direct and indirect. That additional evidence is raised by the following observation:

*Although the action area overlaps suitable habitat for the following special-status plant species: marsh sandwort (*Arenaria paludicola*) (FE), Ventura Marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*) (FE), salt marsh bird’s-beak (*Chloropyron maritimum* ssp. *maritimum*) (FE), San Fernando Valley spineflower (*Chorizanthe parryi* var. *fernandina*) (FC), San Diego button-celery (*Eryngium aristulatum* var. *parishii*) (FE), and Gambel’s water-cress (*Nasturtium gambelii*) (FE), the project would not result in disturbance to any habitat for these plant species. (Emphasis added.) (Id.)*

Recall that the scope, called the “*action area*”⁴ consists of a parking lot, the portions of the jetty on both sides of the Ballona Creek where 6 moorings will be built, and the water between these jetties to the bottom of the channel where it is intended the Interceptor will float plus a 500-foot radius. Whereas the actual geographic area impacted will include habitat types identified by the environmental consultant as adjacent to the limited zone called “the *action area*” which will include: aquatic and mudflat habitats, tidal salt marsh, non-tidal wetland, unvegetated salt pan, and brackish marsh habitat. Because the Biological Assessment does not include the upstream portions of the Creek that will be impacted by moving the collection of garbage to the mouth of the Creek the Biological Assessment finds that “. . . *there is a lack of such habitats with the exception of the aquatic habitat within the action area . . .*”. In fact, all areas will begin at the mouth of Ballona Creek where it empties passed the rock breakwater and reaches those parts of the Creek affected by high tides, including windblown exacerbation of that force all the way to the most upstream boom, including at least a part of the Wetlands, will comprise the affected area. It cannot be presumed that the limited geographic area referenced here will yield the same conclusions when the whole area physically affected is considered. An Initial Study of the total area affected is required.

The Environmental Evaluation includes a new assessment of the potential for adverse

⁴ “*Action area*” is not a CEQA term and may not be relevant regarding compliance with CEQA. Here” the ‘*action area*’ encompasses approximately 102 acres and includes the proposed location of the InterceptorTM and its components, staging area, and construction-related access routes.” (Id.)

impacts caused by vectors, i.e., birds and rats, which had not been done previous to March 2022. This study was added to address concerns that the Interceptor's capture of trash would undoubtedly attract birds and other vectors, which could affect the existing quality of the area. Because this vector analysis took place in 2022 it was not part of the Second NOE. But like the Second NOE, it has not been properly circulated for public comment. No notice of it has been provided and it was provided to the public for the first time on March 31, 2 business days prior to the consideration of it by the Board.

The Environmental Evaluation also found the potential for significant environmental impacts due to the identified vectors that required the implementation of “. . . *operations and maintenance activities and preventative controls outlined in the Pilot Project's Operations, Maintenance, Repair, Rehabilitation, and Replacement Plan (OMRRR Plan)*” Just as with the identified AAMs, the acknowledgement that these “*preventative controls*” are necessary to mitigate project impacts, conclusively establishes the existence of significant impacts that require that triggers full compliance with the procedural requirements of CEQA. Based on this proof, at a minimum CEQA requires notice to all persons affected, public circulation and an opportunity to comment on the appropriate level of environmental review, i.e., a mitigated negative declaration if not a full environmental impact report.

The OMRRR Plan was not provided in the materials supporting the Board's consideration of this agenda item. CEQA requires that the public be provided all of the supporting materials so that their participation is fully informed. If, as it appears, the OMRRR Plan is not included in the materials submitted to the Board for its review, then a material element of what the Board must consider is missing and the Board cannot be expected to make a fully informed decision. CEQA is designed to ensure that both the public and the decision makers are fully informed about all aspects of the environmental impacts of the project.

These procedural failures do not comply with CEQA policies which require full participation by the public including the opportunity to comment on the study. But more importantly, County has been pretending to be working with neighboring residents since the middle of 2021, and yet, no notice of any kind of this study was provided to them. It is not unreasonable to conclude that the County did not want this issue to surface and that this is evidence of that intent which is antithetical to the requirements of CEQA.

At a minimum, before giving this matter any further consideration, the Board should require the Department to prepare an Initial Study, supported by studies of the entire geographic area affected by each and every aspect of the Project, with consideration given to direct, indirect, and reasonably foreseeable future impacts of the implementation of the Interceptor for 2 years, which is the stated intent of the Department. Based on the Initial Study, the appropriate environmental document must be prepared and made available for public comment and the Department must provide legally adequate responses. Only then may County proceed with consideration of the Interceptor.

Why is this important? The County is being asked to fund at least \$4.7 million on a

project that might not be necessary, that the Department has admitted will suspend or even replace what could be an environmentally better solution, whether it be the existing 3-boom system or the Alla Road Program the Department identified 3 years ago as the permanent solution. Without complete information, one of the primary objectives of CEQA cannot be met - the public is entitled to know the environmental values of their decision makers.

On November 5, 2019, the Board authorized the Department to enter into a contract which was subsequently modified by the addition of Exhibit C, *Minimum Performance Criteria*. (See Exhibit C, *Minimum Performance Criteria*, attached hereto.) In other words, the Board authorized the Department to enter into an agreement with TOC, before it was determined, among other key missing elements, how performance of the Interceptor would be measured. Exhibit C, *Minimum Performance Criteria*, provides that the Department will accept a level of performance as follows:

The Interceptor captures at least 50 percent of the plastics and other trash that reach the Interceptor as estimated based on monitoring data gathered during the pilot project

However, this critically important piece of information is missing from the materials the Department has submitted for the Board to decide whether to fund and allow the Interceptor project to proceed. The Department is now asking the Board to ratify a 2-year “pilot” period of operation of the Interceptor blind to the acceptable level of efficacy of the program the Department wishes to begin.

The Department’s environmental consultant stated that the move of the Interceptor from well upstream of the Pacific Avenue Bridge to well below it had the potential to impact aesthetics as follows:

Impacts to aesthetics could include degrading existing character or quality of the site or its surroundings or adverse effects on a scenic vista.

Petitioners have already raised this concern in their March 22, 2022 letter. Here, they wish to highlight the acknowledgement of this impact by the Department’s own environmental consultant. Changes were made to address the identified light and glare impacts. But the supporting materials contain no mitigation of the adverse aesthetic impacts on the thousands of recreational users of the Pacific Avenue Bridge walking and biking path, fisherman, beach goers on any given weekend and holiday who will not be able to avoid looking at tons of garbage during and after a storm event and at least some amount of windblown and tidal driven garbage caused by urban run-off during intervening periods.

On the topic of the adverse impact on aesthetics caused by the interception of the garbage at the mouth of the Ballona Creek as opposed to upstream where it is collected now, there seems to be a faulty assumption that the garbage will quickly be whisked into the Interceptor’s bins upon arrival at the Interceptor’s booms and safely stored there until the bins are full. This faulty assumption fails to take into account the winds, that normally blow upstream, and the tides,

which will reverse the flow of water 50% of every day, plus and the combination of these two forces. Unstudied in any of the materials provided by the Department is the likelihood that garbage will be moved away from the Interceptor's conveyor belt by each and by both of these two forces together during storm events and under regular weather conditions. The effect of these events will be the likelihood for unspecified amounts of floating garbage, particularly high profile garbage such as plastic bags, floating towards, and under the Pacific Avenue Bridge. No consideration has been given to the aesthetic impact of lingering garbage that will result from the combination of these omnipresent and unyielding natural forces.

Based on the identified foreseeable potential adverse aesthetic impacts, the record contains substantial evidence of a variety of unmitigated environmental impacts on the aesthetics of the project which triggers the requirement that the Department conduct an environmental impact report ("EIR") that complies with all of the applicable CEQA substantive and procedural requirements prior to any approval of the Interceptor. CEQA prohibits an agency from approving a project that adversely impacts the environment without properly considering the means to mitigate or otherwise avoid them wherever feasibly such as the consideration of alternatives.

RATIFICATION OF THE NOVEMBER 15, 2019 AGREEMENT BETWEEN THE DISTRICT AND TOC WITHOUT ANY RECORD EVIDENCE THAT THE RESULT WILL BE THE RETRIEVAL OF MORE GARBAGE THAN IS PRESENTLY RECOVERED AND/OR CLEANER WATER CONSTITUTES A VIOLATION OF CEQA

The record does not confirm that the Board has ever been apprised of the Department's negotiated agreement to accept the Interceptor's performance based on collection of only 50% of the garbage that reaches the Interceptor. Nor does the record show what level of success the Department's current 3-boom system achieves. In other words, there is no evidence in the record of whether the deployment of the Interceptor will better or worsen the impact the garbage has on the environment. What is certain is that delaying the interception of garbage until it reaches the mouth of Ballona Creek constitutes a change in the environment. CEQA decisions must be based on data, on facts, on science, and on admissible evidence, not on guess or speculation. Here there is no facts or data regarding the most important aspect of the proposed project.

Indeed, nothing has been shown to the public since the Department instituted its enhanced boom technology, and increased the number of booms, and the placement of them up stream. These intervening improvements require an analysis to demonstrate there is a continuing need for the Interceptor prior to its approval. The County is duty bound to make a good faith effort to ascertain all facts that are relevant to its decisions before considering and approving any proposed action. Based on this record, the County cannot approve the Interceptor because it has no facts on which to conclude whether its decision will improve or worsen the environment.

CONCLUSION

It is only now, for the first time, by the Department's request for funds, for an implementation construction contract, a ratification of the November 15, 2019 agreement

between the District and TOC which now provides for an acceptable minimum efficacy of the Interceptor at only 50% (albeit not yet disclosed to the Board), and adoption of 600+ pages of uncirculated environmental review as compliance with CEQA that the Board is being asked to adopt a defined course of action, and therefore an “approval” of the Interceptor defined in CEQA. The proposed actions based on these requests requires full CEQA compliance. As outlined above and in Petitioner’s earlier letter, this has not occurred.

For all of the reasons set forth in the undersigned’s March 22, 2022 letter and this letter to the Board, Petitioners respectfully request that the Board not take any action on the Interceptor project on April 5, 2022, and instead send it back to the Department with instructions to fully comply with CEQA.

I appreciate the opportunity to have addressed this matter.

Respectfully submitted,

Corin L. Kahn

cc:
Supervisors

County Counsel	Lauren Dods: ldods@counsel.lacounty.gov Laura Jacobson: ljacobson@counsel.lacounty.gov Mark Yanai: myanai@counsel.lacounty.gov
Public Works clients	Cung Nguyen CUNGUYEN@dpw.lacounty.gov

From: [ExecutiveOffice](#)
To: [First District](#); [Holly J. Mitchell](#); [Sheila](#); [Supervisor Janice Hahn \(Fourth District\)](#); [Barger, Kathryn](#)
Cc: [PublicComments](#)
Subject: FW: Ballona Creek Trash *Capture* Project
Date: Monday, April 4, 2022 11:22:24 AM

The following correspondence is being forwarded to you for your review/information.
Note: This pertains to Agenda Item 54 of the April 5, 2022 Board meeting.

From: Tom McMahon <tlm@pn-junction.net>
Sent: Saturday, April 2, 2022 4:23 PM
To: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
Cc: 'Hyperion PN-Junction' <Hyperion@PN-Junction.Net>
Subject: FW: Ballona Creek Trash *Capture* Project

Hello Ruben –

Since I think you work in the same offices, I am copying you as well.

Best regards,

- Tom

From: Tom McMahon <tlm@pn-junction.net>
Sent: Saturday, April 2, 2022 8:32 AM
To: 'Holly J. Mitchell' <HollyJMitchell@bos.lacounty.gov>; 'Holly J. Mitchell' <info@HollyJMitchell.com>
Cc: Hyperion PN-Junction <Hyperion@PN-Junction.Net>
Subject: Ballona Creek Trash *Capture* Project

Good Morning –

I would like to express my (and many technology/engineering colleagues') support for the Ballona Creek Trash Capture Project at Alla Rd. Note that this is not the same as the Ballona Creek Trash *Interceptor™* Pilot Project. That is a different, parallel, program out at the end of Ballona Creek. Please see attached and the notes below (Sources: LACDPW; Playa Capital; CEQA).

I will be happy to discuss with members of your team at your convenience.

Thank you and best regards,

- Tom

Tom McMahon
8207 Delgany Avenue
Playa del Rey, CA 90293
<https://www.linkedin.com/in/mcmahontlm/>

~~

Attached graphs, notes:

The major tributaries to the Ballona Creek include Centinela Creek Flood Control Channel, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous storm drains. The watershed is comprised of all or parts of the Cities of Beverly Hills, Culver City, Inglewood, Los Angeles, Santa Monica, West Hollywood, and unincorporated Los Angeles County. [130 square miles]

The Ballona Creek Trash Capture Project site is downstream of the confluence of the above. All significant trash contributions to Ballona Creek occur upstream of the Trash Capture Project site.

The 1,056 acre [1.65 square miles] Playa Vista Watershed contribution downstream of the Site is pre-filtered by the Freshwater Marsh. There is zero contribution from MDR, and little or none from the Wetlands section [N/A].

The existing lightweight booms provide tertiary collection of any residual debris entering downstream of the Ballona Creek Trash Capture Project site.

Sources: LACDPW; Playa Capital; CEQA

From: [ExecutiveOffice](#)
To: [First District](#); [Holly J. Mitchell](#); [Sheila](#); [Supervisor Janice Hahn \(Fourth District\)](#); [Barger, Kathryn](#)
Cc: [PublicComments](#)
Subject: FW: Homeless Encampment polluting Ballona Wetlands Reserve
Date: Monday, April 4, 2022 11:19:57 AM

The following correspondence is being forwarded to you for your review/information. Note: This pertains to Agenda Item #43 of the April 5, 2022 Agenda.

-----Original Message-----

From: David Conley <dave_conley@yahoo.com>
Sent: Sunday, April 3, 2022 8:52 AM
To: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
Subject: Homeless Encampment polluting Ballona Wetlands Reserve

Action needed!

The Ballona Wetlands Reserve is being polluted and irreparable damage is being done by the homeless encampment sitting along Jefferson Blvd on the edge of the Ballona Wetlands. It is not safe to walk along the Ballona Wetlands due to needles, illicit drug activity and lewd behavior. There is constant dumping into the waters of the wetlands. Homeless are also urinating and defecating in the water of the wetlands. When are we going to stop this activity that is doing irreparable damage to the wetlands? When are we going to enforce the parking restrictions along Jefferson Blvd? I'm fed up with having to look at this mess and the restrictions of not being able to freely walk along the wetlands. This homeless must be relocated and disbanded now.

Please take action now!

Thanks,

David Conley
310-951-5090

Sent from my iPad

From: [ExecutiveOffice](#)
To: [PublicComments](#)
Subject: FW: SERVICE OF NOTICE OF COMMENCEMENT OF PETITION SEEKING WRIT OF MANDATE RE INTERCEPTOR PROJECT
Date: Monday, April 4, 2022 12:30:55 PM
Attachments: [sign ntc commencement 040422.pdf](#)

The following correspondence is being forwarded to you for your review/information.

From: Corin L. Kahn <clkesq@outlook.com>
Sent: Monday, April 4, 2022 10:48 AM
To: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
Cc: First District <firstdistrict@bos.lacounty.gov>; Sheila <Sheila@bos.lacounty.gov>; Supervisor Janice Hahn (Fourth District) <fourthdistrict@bos.lacounty.gov>; Barger, Kathryn <Kathryn@bos.lacounty.gov>; Holly J. Mitchell <HollyJMitchell@bos.lacounty.gov>
Subject: SERVICE OF NOTICE OF COMMENCEMENT OF PETITION SEEKING WRIT OF MANDATE RE INTERCEPTOR PROJECT

FOR YOUR INFORMATION REGARDING AGENDA ITEM 54 ON THE APRIL 5, 2022 AGENDA

--

PLEASE NOTE MY NEW CONTACT INFORMATION:

Corin L. Kahn, Esq.
401 Wilshire Blvd
12th Floor
Santa Monica, CA | 90401

Office: 424-252-4714
Email: clkesq@outlook.com

CORIN L. KAHN, SBN 119201
401 Wilshire Boulevard, 12th Floor
Santa Monica, CA 90401
Telephone: 424 252 4714
EMail: clkesq@outlook.com

Attorneys for all Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROBERT KAILES, an individual; and
GUARDIANS OF THE BALLONA CREEK
ECOSYSTEM, an unincorporated association
of residents and tax payers
Petitioners,

v.

COUNTY OF LOS ANGELES; BOARD OF
SUPERVISORS OF THE COUNTY OF LOS
ANGELES; COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS;
COUNTY OF LOS ANGELES FLOOD
CONTROL DISTRICT; MARK
PASTRELLA, an individual in in his capacity
as Director of County of Los Angeles
Department of Public Works and Los Angeles
Flood Control District; and DOES 1 through
20, inclusive,

Defendants.

THE OCEAN CLEANUP NORTH PACIFIC
ORGANIZATION, is a Delaware Corporation,
and ROES 1 through 20, inclusive,
Real Parties in Interest

Case No. _____

[Assigned for all purposes to _____,
Judge]

NOTICE OF COMMENCEMENT OF
PETITION AND COMPLAINT FOR
WRIT OF MANDATE AND FOR
ADMINISTRATIVE MANDAMUS

[Public Resources Code, §§ 21167.5]

DATE: April 4, 2022

TIME:

DEPT.

Complaint filed: _____

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 4, 2022, and prior to filing a Petition for Writ of
3 Mandate in connection with litigation bearing the same caption, and which includes a cause of
4 action under the California Environmental Quality Act, Public Resources Code Sections 21000
5 *et. seq.* Petitioners served this Notice of Commencement to the Executive Office of the County
6 of Los Angeles in accordance with the requirements of Section 21167.5.

7 Dated: April 4, 2022

CORIN L. KAHN

8
9
10
11 

12 Attorney for Petitioners ROBERT KAILES, an
13 individual; and GUARDIANS OF THE BALLONA
14 CREEK ECOSYSTEM, an unincorporated association of
15 residents and taxpayers
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 506 Santa Monica Blvd. Ste 316; Santa Monica, CA 90401, and I am a member of the Bar of this Court and made the service as follows:

On April 4, 2022, I arranged for the service of the attached NOTICE OF COMMENCEMENT OF PETITION FOR WRIT OF MANDATE UNDER CEQA as follows:

Executive Office of the Los Angeles County Board of Supervisors
executive office@bos.lacounty.gov

 X ONLY BY ELECTRONIC TRANSMISSION. Only by e-mailing the document(s) to the persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the Coronavirus (Covid-19) pandemic because this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the national emergency

 (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at The Santa Monica Post Office, a unit of the United States Postal Service, the same day as it is placed for collection.

 (BY PERSONAL SERVICE) delivered such envelope to a process server whose name is set forth below who then delivered this document to the office/residence of the addressee as noted on the service list or by delivering it to an employee of the above-referenced office in person on the date indicated below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 4, 2022, in Santa Monica, California


Corin L. Kahn

June Kailes, jik@jik.com

04.04.22 @ 08:18 AM

Comments submitted to Los Angeles County Board of Supervisors 04.04.22 via <https://publiccomment.bos.lacounty.gov/>

###

**Please pause your vote regarding approval of the Ballona
Interceptor Item 54** on the Board of Supervisors' 4/5/22 agenda for the following reasons:

We urge you to look beyond the Ballona Interceptor's appeal. The Interceptor is politically persuasive, impressive, appealing, easy to understand and endorse as climate change looms. But it is not the solution to our complex, more extensive, and broader environmental problems. We all must focus on fixing the roof so we are not just mopping the floor. It is crucial to understand the facts. As the journalist and scholar H.L. Mencken says "for every complex problem, there is an answer that is clear, simple, and wrong." There are many unanswered questions and issues that need deep, careful, and thoughtful investigation.

Several of the many questions include:

1. Will the interceptor cause more rather than less environmental harm?.

The Interceptor's current planned location is west of the Pacific Avenue Bridge. Because the County plans to unclamp the booms during storm events to test the Interceptor, trash will accumulate on the Ballona Creek levies. This levee trash build-up causes unnecessary, labor-intensive Creek cleanups conducted by many volunteer groups and county staff. Trash will also flow westbound through the environmentally and ecologically sensitive area where diverse marine and wildlife live, feed, and breed. This wildlife habitat and ecosystem is home to such

protected species as seals, sea lions, brown pelicans, and dolphins that swim into the Creek.

2. **What happened to the March 2019 comprehensive multi-year multi-agency plan** requested by the Los Angeles County Board of Supervisors to enhance ongoing efforts to clean Ballona Creek? How does the Interceptor fit into this plan? What about all the additional pollutants not captured by the Interceptor, such as microplastics, organic waste, wastewater discharges, and agricultural and urban runoff.
3. **Why does the Alla Road Ballona Creek Capture Project “slated for completion in 2026, appears stalled?”** This project is more effective than the Interceptor as it will prevent the trash from flowing down the Creek and capture a wider diversity of smaller polluting particles. So after more than three years of planning, why is it still in the “conceptual phase”?
4. **Is the Interceptor compatible with the goals of Measure W** adopted in 2018 and requires the County to increase the collection of rainwater for millions of LA residents and reduce trash BEFORE it gets to beaches and coastal waters?
5. **What are the minimum performance criteria used to measure the improved booms’ success?** What is the total cost to maintain these booms? (In July 2020, the County added two additional booms. All three booms now have enhanced finer mesh and deeper nettings. These booms are located at Lincoln Boulevard, Purdue Avenue, and Centinela Avenue. Public Works reports indicate these booms provide effective trash capture as long as they are maintained leading to the question of why is the Interceptor needed?

6. What will minimum performance criteria be to determine the success of the Interceptor?
7. What happens to the trash accumulated at the interceptor boom when the winds blow upstream (east) and 50% of the time the tide flows inland?
8. In the possible or probable event of a tsunami, high flood event, or large earthquake, what protections are in place? What happens to the Pacific Avenue Bridge if the Interceptor slams into it?

Many more unanswered questions and issues need deep, careful, and thoughtful investigation. Many of these issues are posted and detailed in Re: Ballona Creek: Interceptor Project as Partial Implementation of the March 19, 2019 Motion by the Board of Supervisors regarding Ballona Creek 3/22/22 and 4/1/22
re: SUPPLEMENTAL OPPOSITION LETTER TO PROPOSED
BALLONA CREEK INTERCEPTOR PROJECT; AGENDA ITEM #54; APRIL 5, 2022 from Corin Kahn.

We participated in good faith in public and private meetings with Public Works. Our experience is that Public Works have not been transparent. Information is withheld. Public Works promotes a “trust us” attitude and process, leaving highly impacted community members frustrated and deceived. Documents are not freely shared. There is a selective censoring and cherry-picked answering questions submitted by email and at public meetings. Questions that get responded to by email are not posted in a public FAQ. One example of withholding information is the lengthy “Public Works Board Letter” (posted for your review for the 4/5/22 meeting). It contains new sections (as of March 22, 2022) never seen before by the public.

We wish to work with you as partners and hope you will pursue a careful and thorough investigation of the issues, as we prefer NOT TO engage in legal activity to pause the process.

From: [ExecutiveOffice](#)
To: [First District](#); [Holly J. Mitchell](#); [Sheila](#); [Supervisor Janice Hahn \(Fourth District\)](#); [Barger, Kathryn](#)
Cc: [PublicComments](#); [ExecutiveOffice](#)
Subject: FW: April 5 Agenda Item 54 -- Comment Letter
Date: Tuesday, April 5, 2022 7:55:47 AM
Attachments: [220405.Cmt Ltr Item 54.Blumenthal.pdf](#)

The following correspondence is being forwarded to you for your review/information.

From: Smith, David <DCSmith@manatt.com>
Sent: Monday, April 4, 2022 8:50 PM
To: ExecutiveOffice <ExecutiveOffice@bos.lacounty.gov>
Cc: mpestrella@pw.lacounty.gov; myanai@counsel.lacounty.gov; LJacobson@counsel.lacounty.gov; Ldods@counsel.lacounty.gov; CUNGUYEN@dpw.lacounty.gov
Subject: April 5 Agenda Item 54 -- Comment Letter

Please find attached a comment letter for Item 54 on the April 5 Board of Supervisors Agenda. Many thanks for your attention to this matter.

Respectfully,

David Smith
Partner

Manatt, Phelps & Phillips, LLP

One Embarcadero Center
30th Floor
San Francisco, CA 94111

695 Town Center Drive
14th Floor
Costa Mesa, CA 92626

M (949) 923-8170 D (415) 291-7452 F (415) 291-7474

DCSmith@manatt.com

manatt.com

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply email and destroy the original transmission and its attachments without reading them or saving them to disk. Thank you.

April 4, 2022

Client-Matter: #59775

VIA ELECTRONIC MAIL (*executiveoffice@bos.lacounty.gov*)

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Ballona Creek Trash Interceptor
April 5, 2022 Agenda Item 54 -- Impropriety of Reliance on November 2019
Notice of Exemption

Dear Honorable Members of the Board of Supervisors:

We represent David and Tracy Blumenthal with regard to the referenced matter. While we commend the County for its efforts to rid our aquatic resources of a significant pollutant of concern, i.e., trash, we fear that employing abridged means of accomplishing a laudatory goal may ultimately have the opposite outcome of the original intent.

We believe there are many aspects of the Ballona Creek Trash Interceptor ("Project") that remain experimental and unproven, especially in the highly sensitive proposed location at the confluence of Ballona Creek and the Pacific Ocean, immediately adjacent to the Ballona Wetlands Restoration Project. Accordingly, we respectfully contend the adoption of a Notice of Exemption ("NOE") for this significant and impactful Project is not only imprudent but would be in violation of the California Environmental Quality Act ("CEQA"), should you proceed only in reliance on the November 5, 2019 NOE as recommended in the Staff Report.

The entire 615 page Staff Report analyzing the environmental impacts of the Project are all dated *after* the Board adopted the subject NOE on November 5, 2019. The majority of the environmental technical studies by Stantec and others are all dated October 2020. And, critically, the "Environmental Evaluation" – a mandatory component of analysis prior to adopting one of the CEQA exemptions claimed by the County on November 5, 2019 – is dated March 22, 2022, less than two weeks ago. (Staff Report, pp. 7 – 27.)

Additionally, the location of the proposed Project was moved *after* adoption of the NOE. (Staff Report, pg. 2.) Accordingly, it was impossible for the Board to have had any accurate and applicable substantial evidence regarding "consideration of environmental factors" as required by CEQA. (See, Pub. Res. Code § 21102; CEQA Guidelines 15306, as discussed below.)

In the November 5, 2019 NOE, the Board identified the following as justifying the Project being exempt from full environmental review under CEQA:

- Categorical Exemption. State Type and section number: §15306
- Statutory Exemption, State code number: § 15262

The narrative justification offered in support of adoption of the NOE was:

Having considered environmental factors, the Pilot Project is exempt from CEQA per Section 15262 because it involves only a feasibility study of the InterceptorTM as a trash removal option within Ballona Creek for possible future action which the Los Angeles County Board of Supervisors has not approved, adopted or funded.

The Pilot Project is exempt from CEQA per Section 15306 of the State CEQA Guidelines and Class 6 of the County's Environmental Document Reporting Procedures and Guidelines, Appendix G because it consists of basic data collection and research Interceptor'sTM effectiveness to abate trash in Los Angeles County watersheds and prevent it from reaching the ocean.

The Pilot Project is not located in a sensitive environment and there are no cumulative impacts, unusual circumstances, substantial adverse change in the significance of any historic resource or other limiting factors that would make exemption inapplicable based on the project records. (November 5, 2019 NOE, pp. 1-2.)

The actual text of CEQA Guidelines Section 15306 provides:

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities ***which do not result in a serious or major disturbance to an environmental resource.*** These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. (*Emphasis added.*)

Nowhere in the November 5, 2019 NOE does the County identify a finding, much less evidence in support of a finding, that the purported "activities" "do not result in a serious or major disturbance to an environmental resource." Perhaps the implication is that it took all 615 pages of the Staff Report to establish such a finding. But there are two problems: first, the Staff

Report never expressly makes such a finding; second, even if it did, not one of the 615 pages presented to this Board today was in front of it in support of making such a mandatory finding on November 5, 2019.

As to CEQA Guidelines Section 15262, it provides:

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration *but does require consideration of environmental factors*. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities. (*Emphasis added.*)

As noted above, pages 7 to 27 of the Staff Report present an "Environmental Evaluation" for the Board's consideration, presumably seeking to satisfy the mandate of Section 15262. However, this analysis is dated March 22, 2022. Additionally, nothing in the November 5, 2019 NOE purports to find nor attest to the presence of evidence demonstrating "consideration of environmental factors" in support of adoption of the NOE at that time.

Finally, even were anyone to suggest the timely presence of evidence in support of the mandatory components of Sections 15306 and 15262, there was subsequently a material and consequential change in the Project – its relocation in more immediate proximity to the opening of Ballona Creek to the Pacific Ocean. Among other things, the location changed from the jurisdictional drainage control of the Los Angeles County Flood Control District to that of the U.S. Army Corps of Engineers. (See, Staff Report, pg. 6.)

Accordingly, taking action on the Project today solely in reliance on the November 5, 2019 NOE would violate CEQA. And while our procedural objection to reliance on the past and unsupported NOE is addressed above, we have substantive objection to reliance on an NOE for this significant project being placed in this sensitive resource in any instance. Included in our concerns, not addressed in the Staff Report, are:

- Obstruction of a navigable waterway in violation of Section 10 of the Federal Rivers and Harbors Act;
- Saturated pollution trapped by the booms sinking and falling to the floor of Ballona Creek constituting an unpermitted discharge of dredge or fill material into waters of the United States in violation of the federal Clean Water Act, exposing the County to potential citizen enforcement suits;

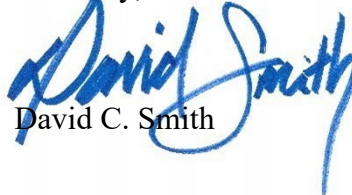
- No consideration or analysis regarding compliance with the State of California's new Wetland Riparian Area Protection Policy (https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html); and
- Analysis and implications of the potential presence of California "fully protected" birds, the California least tern and, potentially, the brown pelican.

While we understand that some at the County are of the mind that establishment of this facility can defer CEQA analysis as a "research" or "evaluation" facility, there are no similar exemptions in other permitting regimes – federal and state – that regulate the placement of a major obstruction in the midst of an open and tidal watercourse that, by design, necessitates an ongoing regime of engagement, maintenance, and impacts to the open waters and the biologic resources and species dependent thereon.

With respect, in no instance does there record before you support proceeding in mere reliance on the November 5, 2019 NOE. Further, the unstudied implications of this new technology in this dynamic location require full evaluation under CEQA.

We appreciate your attention to our concerns.

Sincerely,



David C. Smith

DCS:dcs

cc: Mark Pestrella (mpestrella@pw.lacounty.gov)
Mark Yanai (myanai@counsel.lacounty.gov)
Laura Jacobson (LJacobson@counsel.lacounty.gov)
Lauren Dods (Ldods@counsel.lacounty.gov)
Cung Nguyen (CUNGUYEN@dpw.lacounty.gov)